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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

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Item 3 of the provisional agenda*
Consideration of the revised draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 2, 2 *bis* (subparagraph (a) only), 4, 4 *bis*, 4 *ter*, 4 *quater*, 7, 7 *bis*, 7 *ter*, 17, 17 *bis*, 18, 18 *bis* and 18 *ter*

Proposals and contributions received from Governments

Addendum

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* A/AC.254/26.

II. Proposals and contributions received from Governments

Belarus

[Original: Russian]

Article 10: Extradition

1. In the light of the requirements of judicial procedure, Belarus suggests that it would be advisable in this article to specify the purposes of extradition, namely, that extradition is undertaken for the purpose of criminal prosecution or enforcement of a judicial sentence.

2. Notwithstanding the fact that the general conditions governing extradition are referred to in paragraph 5, some specific conditions are mentioned in paragraphs 6 and 10 (nationality, prosecution on account of gender, race, etc.). Belarus feels that it would be logical either to enumerate all the possible grounds for refusing an extradition request or else to delete from the text of the draft Convention the aforementioned grounds for refusal.

Paragraph 7 bis

3. It is proposed that paragraph 7 *bis* be deleted from the text for the following reasons:

(a) It is unlikely that the national law of States Parties will provide for simplified procedures for extradition alongside the general procedures;

(b) The application of simplified procedures for extradition solely in the case of offences covered by this Convention is illogical.

Attention should also be drawn to the unacceptability of using the words "any person" in this paragraph since this expression would also encompass the nationals of the requested State Party, whose extradition is not permitted under the law of most States.

4. In practice, extradition normally relates to the transit conveyance of the extraditable persons. In that regard, Belarus would propose supplementing article 10 with provisions stipulating the obligations of States Parties to authorize the transit conveyance of such persons across their territory.

Article 14: Mutual legal assistance

Paragraph 7

5. Belarus considers it necessary in paragraph 7 to specify cases in which the extradition of persons held in custody for the purposes of giving evidence may not take place (if, for example, during the period that such person is held in the requested State the time limit of the custody of that person elapses).

Paragraph 20 bis

6. Belarus thinks that there may be an error in paragraph 20 *bis*. The words "requested" and "requesting" should be reversed. Also, the words "with the consent of the latter" should be added at the end of the paragraph.

Article 14 bis: Joint investigations

7. Given that the function of investigation comes within the competence not only of the police and judicial authorities, Belarus proposes that the words "or other competent" be inserted after the word "police".

Article 18 ter: Measures to enhance cooperation with law enforcement authorities

Paragraph 2 bis

8. In paragraph 2 *bis* reference should be made to the fact that immunity from prosecution shall only be granted if the person did not participate in the offence committed.

China*

[Original: English]

Article 14: Mutual legal assistance

Paragraph 6

1. Replace the paragraph with the following:

> "6. The requested State Party shall be obliged to provide assistance only if the conduct in relation to which the request was made would constitute an offence under its domestic law. However, it may, when it deems appropriate, provide assistance, in so far as it decides to do so at its own discretion, irrespective of whether the conduct would constitute an offence under the laws of both the requesting State Party and the requested State Party."

Paragraph 7

2. Subject to its domestic laws and practice, each State Party shall, upon request:

(a) When a witness, expert or other person who is present in its territory consents, facilitate his or her presence in the territory of the requesting State Party to give evidence in a proceeding or to assist in an investigation;

(b) When a person who is in custody in its territory consents, reach an agreement with the requesting State Party for the purpose of facilitating his or her presence in the territory of that Party to give evidence in a proceeding or to assist in an investigation, provided that he or she is kept continuously in custody and is returned unconditionally as soon as possible after having given evidence or assisted in the investigation.

(...) A witness, expert or other person who is present in the territory of the requesting State Party in accordance with paragraph 7 (a) of this article shall not be prosecuted, detained, punished or subject to any other restriction of his or her personal liberty in that territory in respect of any acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the person having had, for a period of fifteen consecutive days or for any period agreed upon by the Parties, from the date on which he or she has been officially informed

* Amendments previously issued in documents A/AC.254/L.38 and A/AC.254/L.50.

that his or her presence is no longer required, an opportunity of leaving, has remained voluntarily in the territory or has returned voluntarily after having left.

Paragraph 8

3. Add the following sentence after the first sentence: "A State Party may also designate separate authorities for the same purpose for its special regions or territories that have separate systems of mutual legal assistance."

France

[Original: French]

Article 2: Scope of application

Paragraph 1

France proposes that paragraph 1 be reworded as follows:

"1. The Convention shall, except as otherwise provided herein, apply to the prevention and suppression of:

"(a) Serious crime, as defined in article 2 *bis* of this Convention;

"(b) The offences established in articles 4, 4 *ter* and 17 *bis* of this Convention; where involving an organized criminal group; and

"(c) The offence established in article 3 of this Convention."

Libyan Arab Jamahiriya*

[Original: Arabic]

Article 14: Mutual legal assistance

Paragraph 2

Replace paragraph 2 with the following:

"2. Legal assistance may be requested for the following purposes:

"(a) Obtaining evidence or information;

"(b) Effecting service of judicial documents;

"(c) Executing searches and seizures;

"(d) Examining objects and sites;

"(e) Providing originals of relevant documents and records or certified copies thereof;

"(f) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

"(g) Facilitating the appearance of persons in the requesting State Party;

* Amendments previously issued in document A/AC.254/L.49.

"(h) Any other type of assistance.

"(...) In order to put the provisions of paragraph 2 of this article into effect, it is necessary:

"(a) That this is allowed by the domestic law of the requested State Party;

"(b) That the action taken in response to the request for legal assistance is executed by the requested State Party as it deems appropriate."

Lithuania

[Original: English]

Article 9

Paragraph 2

Paragraph 2 of article 9 of the draft Convention recommends that but does not make it an obligation for State Parties to establish jurisdiction over offences committed by their nationals in a foreign State (when the alleged offender is a national or a habitual resident of that State, the offence was committed against that State or a national of that State or the offence has substantial effects in that State). Lithuania believes that prosecution for offences committed by nationals in foreign States is an obligation of the State concerned vis-à-vis other States in whose territories those offences were committed, just as prosecution of offences committed against the State itself, against its nationals or offences with effects in that State is an obligation of that State vis-à-vis its citizens. Therefore, the recommended principles of establishment of jurisdiction are not of an identical nature. Taking this into account, Lithuania ventures to suggest setting in the Convention the obligation for a State to establish jurisdiction over the offences when the alleged offender is a national of that State and only recommending establishment of jurisdiction in cases when the offence was committed against that State or a national of that State and the offence has substantial effects in that State.

Netherlands

[Original: English]

Structure of the Convention

1. The Secretariat should be given a mandate to propose to the Ad Hoc Committee at its ninth session a proper structure of the Convention.

2. The practical application of the Convention can undoubtedly be enhanced by structuring the Convention in such a way that the reader can easily find the subject he or she is looking for. This could be done by dividing the Convention into chapters (i.e. "Criminalization and jurisdiction", "Cooperation", etc.), breaking down particularly long chapters, such as "Cooperation", into subchapters and finally subdividing long articles, such as articles 10 and 14, into further articles with clear titles.

Article 10: Extradition

3. As a follow-up to footnote 107 in document A/AC.254/4/Rev.6, paragraph 1 *bis* and 1 *ter* should read:

> "1 *bis*. Where extradition is requested for serious offences [as referred to in article 2], the requested State Party shall, for the purpose of determining the involvement of an organized criminal group, take into consideration the information contained in the warrant of arrest or order having the same effect or in the conviction of the person whose extradition is requested or in any additional statement of the facts provided by the requested State Party.
>
> "1 *ter*. If the request for extradition includes several separate serious offences, but of which some are other than those covered by this Convention, the requested Party shall have the right to apply this article also in respect of the latter offences."

4. As regards the revision to paragraph 1 *bis*, since article 2 will provide that serious offences involving an organized criminal group fall within the scope of the Convention, this paragraph is intended to indicate to State Parties how the requesting State Party can provide information on the involvement of an organized criminal group and at the same time gives guidance to the requested State Party on how it can determine the involvement of an organized criminal group.

5. Paragraph 1 *ter* does not establish an obligation. It provides an option for State Parties in cases where extradition is requested, not only for offences covered by this Convention, but also for other serious offences, where for example the involvement of an organized criminal group can not be determined, to grant extradition also for those offences falling outside the scope of the Convention. Without this paragraph the requested State Party would be obliged to refuse extradition for the latter offences for the sole reason that they fall outside the scope of the Convention.

6. The Netherlands proposes to add a new paragraph at the end of the article:

> "(...) Nothing in this article shall prevent State Parties to apply this article to other serious offences than those covered by this Convention."

This provision does not establish an obligation. It is intended to provide State Parties with the option to apply the provisions on extradition in cases of serious offences all of which fall outside the scope of the Convention (no involvement of an organized criminal group can be determined). This provision goes thus beyond the provision of paragraph 1 *ter* and is intended especially in cases where the extradition is sought at an early stage of the investigation.

Paragraph 3

7. The sentences in brackets should be replaced with: "Each State Party shall at the moment of the ratification of the Convention declare whether it makes extradition conditional on the existence of a treaty and, if so, how it will apply this paragraph." Experience with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 shows that the addition of this sentence is of great importance for the practical application of the Convention. The declaration is intended to prevent States from preparing and sending extradition requests to other States only to find out that the requested State does not apply this paragraph.

Article 14: Mutual legal assistance

Paragraphs 1 and 1 bis

8. The present paragraphs 1 and 1 *bis* should be replaced with the following text:

> "1. States Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences covered by this Convention.
>
> "1 *bis*. Where the request relates to serious offences [as referred to in article 2], the requested State Party shall for the purpose of determining the involvement of an organized criminal group, take into consideration the information contained in the request or in any additional statement provided by the requested State Party."

Paragraph 1 ter

9. The present paragraph 1 *ter* should be replaced with:

> "1 *ter*. Mutual assistance shall also be afforded in connection with investigations, prosecutions and judicial proceedings as referred to in paragraph 1 of this article for which legal persons may be held criminally liable in the requesting State Party. Assistance shall not be refused on the sole ground that the domestic law of the requested State Party does not provide for criminal liability of legal persons."

Although article 5 provides States Parties with an option to establish criminal, civil or administrative liability of legal persons, this should not have as a consequence that States Parties who have established a criminal liability of legal persons could not get mutual assistance from a State Party that has instead chosen to establish civil or administrative liability of legal persons.

10. The Netherlands proposes to add a new paragraph at the end of the article:

> "(...) Nothing in this article shall prevent States Parties to apply this article to other serious offences than those covered by this Convention."

This provision does not establish an obligation. It is intended to provide States Parties with the option to apply the provisions on mutual assistance in cases were assistance is requested for serious offences all of which fall outside the scope of the Convention (no involvement of an organized criminal group can be determined). This provision is intended especially in cases where the assistance is sought at an early stage of the investigation.

Russian Federation*

[Original: Russian]

Article 7 ter

1. In the interests of effective implementation of the provisions of the draft United Nations Convention against Transnational Organized Crime concerning cooperation in matters relating to the freezing, seizure and confiscation of property, the Russian delegation considers it essential that the domestic legislation of States Parties

* Amendments previously issued in document A/AC.254/L.144.

allow courts or other competent authorities of the requested State to review the question and to take a decision on the return in full or in part to the requesting State of property, proceeds of crime, instrumentalities used in its commission or other things in relation to which a request has been received.

2. The Russian delegation accordingly proposes that the following wording be added as paragraph 1 *ter* of article 7 *ter*:

> "Each State Party shall adopt such legislative and other measures as may be necessary to permit its courts and other competent authorities to review questions concerning the transfer, in full or in part, to a requesting State of property, proceeds of crime, instrumentalities used in its commission or other things in relation to which an appropriate request for their transfer has been received."

Syrian Arab Republic

[Original: Arabic]

A. Amendment previously issued in documents A/AC.254/L.34 and A/AC.254/L.131

Article 9: Jurisdiction

Paragraph 1

1. The phrase beginning with "when the offence is committed" up to the end of the paragraph should be replaced with the following: "when the offence is committed in its territory or on board a vessel or an aircraft registered in it [the State] at the time the offence is committed." The phrase "at the time the offence is committed" corresponds to article 4, paragraph 1 (a) (ii), of the 1988 Convention.

Paragraph 2

Subparagraph (c)

2. Subparagraph (c) should be deleted as it can be replaced by subparagraph (b).

Subparagraph [(d)]

3. Subparagraph [(d)] should be deleted.

Paragraph 2 bis

4. This paragraph should be deleted as it is duplicated by paragraph 3.

Paragraph 4

5. This paragraph should be deleted.

Paragraph 5

6. The words "shall coordinate" should replace the words "shall seek to coordinate".

Paragraph 6

7. The words "Without prejudice to the provisions of article 2, paragraph 4, of this Convention" should be added at the beginning of this paragraph.

Article 10: Extradition

Paragraph 1

8. The text of paragraph 1 should remain as is and not follow the suggestion contained in footnote 81, since the minimum and maximum sentences to deprivation of liberty for "serious crime" will be established in article 2 *bis*, subparagraph (b), and article 6, paragraph 5, provides for taking into account the gravity of offences when establishing sanctions.

Paragraph 2

9. There is no need for footnote 82 relating to paragraph 2, since double criminality goes without saying.

Paragraph 3

10. Although the words "it may" appear in paragraph 3 of article 6 of the 1988 Convention, it would be advisable to use the words "it shall" as long as paragraph 2 provides for consideration of the offences to which article 10 shall be applied as included in the applicable treaties on extradition.

Paragraph 6

11. [Not applicable to the English text.]

Paragraph 7

12. The text of this paragraph should remain as is, including the bracketed text.

Paragraph 9

Subparagraph (a)

13. There is no need for the phrase "for the purpose of prosecution", which is placed between brackets, since the person could be an offender or an alleged offender, whereas the phrase "for the purpose of prosecution" refers only to the alleged offender.

14. The phrase "subject to the condition of double criminality" should be retained, whereas the last sentence of subparagraph (a) and all of subparagraph (b) should be deleted.

Paragraph 14

15. This paragraph should remain in article 10.

Article 14: Mutual legal assistance

Paragraph 13

16. The words "a criminal offence" at the end of the paragraph should be replaced with the words "a punishable offence", since perjury constitutes a misdemeanour in certain instances and a felony in others.

Paragraph 16

Subparagraph (c)

17. The meaning of the words "similar offence" requires clarification.

B. Further amendments

Article 10: Extradition

Paragraph 6

18. The reference of the term "gender" to both men and women should be explained.

19. The Syrian Arab Republic supports the proposal of China with regard to the addition of the following sentence at the end of paragraph 6: "Before refusing extradition pursuant to this paragraph, the requested State Party shall consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegations."

20. The Syrian Arab Republic supports the proposal of Italy that a provision addressing the issue of persons sentenced *in absentia* be added after paragraph 6 that might read as follows:

> "1. The fact that a judgement has been issued *in absentia* shall not be a ground for refusal of extradition if it appears that the case has been tried with the same guarantees as when a defendant is present and if one of the following has occurred:
>
> "(a) The defendant, having knowledge of the trial, has deliberately avoided being arrested; or
>
> "(b) The defendant, having been regularly summoned, has deliberately failed to appear at the trial.
>
> "2. When such conditions are not met, extradition shall in any case be granted if the requesting State gives assurance, deemed satisfactory by the requested State, that the person whose extradition is sought shall be entitled to a new trial protecting his or her rights of defence."

Paragraph 9

Subparagraph (a)

21. The word in brackets "[Convention]" should be deleted.

22. The brackets should be removed.

Subparagraph (a bis)

23. This paragraph should be deleted.

Subparagraph (a ter)

24. Option 1 should be adopted.

Proposed additional paragraph

25. The Syrian Arab Republic supports the proposal of India (contained in document A/AC.254/L.43) that, following paragraph 10, a new paragraph should be inserted to deal with requests for the extradition of the same person or persons, to read as follows:

> "(...) If the extradition of the same person or persons, whether for the same offence or for different offences under this Convention, is requested by more than one State Party, the requested State Party shall determine to which State the person or persons shall be extradited first. In determining this, the requested State shall give due consideration to the following factors:
>
> "(a) The severity of the offences for which extradition has been sought by the requesting States Parties;
>
> "(b) The nationality of the person or persons whose extradition has been sought;
>
> "(c) The dates of receipt of the requests for extradition;
>
> "(d) Any other factor that the requested State may consider expedient."

Comments on the additional paragraphs proposed by Poland (A/AC.254/5/Add.7)

26. There is no need to add the proposed new paragraph 15 since other States have established their jurisdiction in accordance with paragraphs 1 and 2 of article 9.

27. It should be noted that paragraph 17 of article 14 contained a provision similar to that of paragraph 16.

28. It is preferable that the provision of paragraph 17 be limited to refusal of extradition if the facts on which the request is grounded do not constitute an offence under the law of the requested State.

Article 14: Mutual legal assistance

Paragraph 1

29. The brackets should be removed.

Paragraph 1 bis

30. This paragraph should be deleted.

Paragraph 1 ter

31. The Syrian Arab Republic supports the following reformulation of this paragraph, as indicated in the footnote:

"Mutual legal assistance shall be afforded with respect to investigations, prosecutions and judicial proceedings relating to offences for which a legal person may be held liable in the requesting State Party."

Paragraph 1 ter

32. The brackets should be removed.

Paragraph 2

Subparagraph (b)

33. The brackets should be removed.

Subparagraph (c bis)

34. The brackets should be removed.

Subparagraph (e)

35. The brackets should be removed.

Subparagraph (h bis)

36. The brackets should be removed.

Subparagraph (i)

37. The words in brackets "[or requesting]" should be deleted.

Paragraph 6

38. The Syrian Arab Republic supports the alternative formulation proposed by China, as contained in the footnote.

Paragraph 7

39. The brackets should be removed.

40. The words "shall adopt" should be replaced with the words "shall seek to adopt".

Subparagraph (b)

41. The words "[as soon as circumstances permit]" should be replaced with the words "as soon as the person has finished giving evidence or assisting in the investigations".

Subparagraph (c)

42. The words "or other" should be inserted between the word "extradition" and the word "proceedings".

Paragraph 8

43. The words in brackets "[, controlling quality and setting priorities]" should be deleted.

Paragraph 16

Subparagraph (c)

44. The meaning of the words "similar offence" should be clarified.

Subparagraph (g)

45. This subparagraph should be deleted following the proposal to delete paragraph 1 *bis* of article 14.

Paragraph 18

46. The brackets should be removed.

Paragraph 20

47. [Not applicable to the English text.]

Article 15: Special investigative techniques

Paragraph 1

48. The brackets should be removed.

49. The word "transnational" should be inserted between the word "combating" and the words "organized crime".

Paragraph 2

50. The brackets should be removed from the phrase "[covered by this Convention]".

Paragraph 3

51. This paragraph should be amended to read:

> "3. In decisions to use such special investigative techniques at the international level, consideration shall be given to financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned."

Paragraph 4

52. The brackets should be removed.

Article 16: Transfer of proceedings

53. The words "an offence covered by" should be retained.

Tajikistan*

[Original: English]

Article 14: Mutual legal assistance

Paragraph 13

In paragraph 13, the word in square brackets could be deleted on the ground that it could be considered to indicate a lack of confidence in the law enforcement agency to which a request is addressed for whose execution an additional authority with supervisory functions is required.

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* Amendments previously issued in document A/AC.254/L.130.

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Consideration of the additional international legal instrument against illegal trafficking in and transporting of migrants

Proposals and contributions received from Governments

Addendum

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II. Proposals and contributions received from Governments

Argentina*

[Original: Spanish]

Argentina proposes that the following section be inserted after article 7 and the subsequent sections renumbered accordingly:

"(...) Trafficking in migrants by land

"Article (...)

"1. States Parties shall make provision in their respective legislations to establish the liability of commercial overland carriers for the transport of passengers and crew members, in conformity with the immigration law of the country of destination or transit. To that end, the legislation of States Parties shall provide that commercial overland carriers shall, as an absolute prerequisite for undertaking the carriage, demand all due documentation required for admission of their passengers to the territory of the State of destination or transit in any of the categories of admission stipulated in domestic immigration law.

"2. States Parties shall establish in their domestic legislation the obligation for commercial overland carriers, in cases of transit through one or more States, to declare the names of passengers whom they are transporting to the immigration authority competent for the latter. States Parties shall also adopt measures in their domestic legislation to render the commercial overland carrier responsible for the actual exit of such persons from the corresponding territories and shall provide that, in the event that passengers declared as being transported fail to leave the country in the manner, at the place and within the time limit stipulated in the immigration law of the transit country, the immigration authority of that country may arrange for the return of such persons at the exclusive cost of the carrier.

"3. It shall be possible for the provisions of this article not to apply within the territorial scope of economic unions, customs unions or free-trade zones that have specific regulations governing the entry into and movement of persons within such integrated geographical areas that do not conform to the provisions of this article.

"4. Any State Party that has sufficient grounds to believe that a commercial overland carrier is involved in activities related to trafficking in migrants may request the necessary assistance to counter such activities from the State Party in which that carrier is lawfully constituted, or in which the vehicles used by such carrier in the provision of its services are situated or registered, or in which such carrier has its actual place of business, in conformity with the legal provisions of the country concerned.

"5. States Parties shall establish ongoing cooperation mechanisms for the detection of any carriage of persons, from one country to another or in transit to a third country, undertaken by persons on an individual or organized, regular or occasional basis without due authorization, by a means of overland transport.

* Amendment previously issued in document A/AC.254/L.99.

"6. States Parties shall establish institutional cooperation mechanisms for the detection and punishment of freight carriers who engage in the smuggling of migrants.

"7. States Parties shall offer the fullest assistance with regard to the investigation of methods of overland trafficking coming within their jurisdiction. Authorities involved shall act with all due diligence in order to ensure that such assistance is furnished expeditiously with a view to avoiding any impairment of such cooperation."

Austria

[Original: English]

Article 2

Paragraph 2

1. As outlined in paragraphs 5-7 of the contribution of Austria and Italy (A/AC.254/L.71), both delegations are of the opinion that in particular the procurement of illegal entry into a State other than the one in which the criminal offence is committed should also be covered by the Protocol.

2. To that end the following options could be envisaged:

(a) To replace the words "in a State" in article 2, paragraph 1 (a), with the words "in any State";

(b) To insert after the words "smuggling of migrants" in option 1 of article 4, paragraph 1, or in option 2 of article 4, paragraph 1 (a), the following words "into any State".

3. Either option would cover not only the organization of smuggling activities in a third country but also the smuggling out of the State concerned into another State.

4. As already mentioned in paragraph 7 of the previous submission (A/AC.254/L.71), the obligation to prosecute is subject only to the provisions on jurisdiction (article 6). Thus neither option mentioned above would imply the obligation to establish universal jurisdiction.

Austria, Canada, Germany and Netherlands

[Original: English]

Article 4

Paragraph 7

An alternative to paragraph 7 is to insert the following paragraph as paragraph 3 in article 5 (Scope of application):

"3. This Protocol is without prejudice to the position and status of smuggled migrants."

Austria and Italy*

[Original: English]

Introduction

1. The Economic and Social Council, in its resolution 1999/20 of 28 July 1999, adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice at its eighth session, provided the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime with a strong mandate to proceed with the negotiation of the draft protocols to the draft United Nations Convention against Transnational Organized Crime, "in order to enhance the possibility of their completion at the same time as the draft Convention" To that end, the Ad Hoc Committee has decided that informal consultations for the purpose of discussing various items already touched upon in the plenary should be held.

2. At the fifth session of the Ad Hoc Committee, first informal consultations on the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.1/Rev.2) will be held. Since a certain convergence of views became apparent in a number of important areas during the deliberations on the draft Protocol held at the fourth session of the Ad Hoc Committee, it might be appropriate for the informal consultations at the fifth session to focus on strengthening the emerging consensus and on outlining possible solutions, without necessarily proposing concrete language.

3. Without prejudice to the agenda of the informal consultations, only certain aspects of the draft Protocol where a degree of consensus seems within reach will be addressed in the present document. In that context, it should be recalled that the general purpose of the draft Protocol is to counter the phenomenon of smuggling of migrants by penalizing the smugglers and to prevent persons from becoming the victims of organized smuggling groups.

Article 2: Definitions

Paragraph 1

4. Whereas there was a certain convergence of views on the core parts of the definitions contained in paragraphs 1 (a) and (b) of article 2, some delegations questioned the need for retaining the words "illegal residence" (paragraph 1 (c)), "profit" (paragraph 1 (d)) or "fraudulent travel documents" (paragraph 1 (e)).

Paragraph 2

5. While there was broad agreement that any loopholes—such as the procurement of illegal entry into a State other than the one in which the criminal offence is committed—should be avoided, no consensus as to how to achieve that aim has yet emerged. To illustrate the need to avoid any loopholes, various scenarios that might arise in politically more fragmented areas could be envisaged. For example, a criminal organization, camouflaged as a travel agency, might organize, or direct others to carry out, the smuggling of migrants between State A and State B. In order to avoid prosecution, the

* Amendments previously issued in document A/AC.254/L.71.

criminal organization might set up its headquarters in State C. Thus, prosecution of the organization by State C would be needed.

6. To deal with the scenario outlined above, the following options were considered at the fourth session of the Ad Hoc Committee:

(a) Paragraph 2 could be retained in article 2, but perhaps more clearly formulated;

(b) The content of paragraph 2 could be incorporated into paragraph 1 (a) or into article 6.

7. Some delegations expressed their concern that the retention in article 2 of the principle defined in paragraph 2 thereof would entail a too broad obligation of States to prosecute the smuggling of migrants, even when no link to the State concerned existed. Other delegations, however, were of the opinion that such a result would not arise because the obligation to prosecute derived exclusively from article 6 and not from any broader definition contained in article 2.

Article 4: Criminalization

Paragraphs 1 and 2

8. The principles embodied in paragraphs 1 and 2 of article 4 were generally accepted. However, the need to refer more explicitly to the fact that the crimes covered are crimes committed by organized groups was emphasized by a number of delegations.

Paragraphs 5 and 6

9. The possibility of merging paragraphs 5 and 6 was discussed.

Paragraph 7

10. There was broad agreement that the Protocol should neither harm migrants nor promote the goals of immigration policies. A strongly held view was that no migrant should be held criminally liable solely on account of having been smuggled. At the same time, it was clear that States must retain the right to apply their domestic laws if a migrant engaged in conduct that constituted an offence under those laws. In that connection, there was a discussion of the question whether criminal offences in relation to the fabrication and use of fraudulent documents should be covered by paragraph 7.

Belgium

[Original: French]

A. Amendment previously issued in document A/AC.254/L.35.

Article 5

Paragraph 2

1. Belgium welcomes the fact that the 1951 Convention[1] and the 1967 Protocol[2] relating to the Status of Refugees have been taken into consideration in the first paragraph of the preamble, in article 5, paragraph 2, and in article 7, paragraph 13, of the draft additional instrument against illegal trafficking in and transporting of migrants (A/AC.254/4/Add.1/Rev.1). However, it would like the second paragraph of article 5 to be supplemented. For that purpose, it wishes to submit to the Ad Hoc Committee a proposal for a safeguard clause such as that contained in article 15 of the draft protocol relating to trafficking in women and children (A/AC.254/4/Add.3/Rev.2):

> "Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[1] and the 1967 Protocol[2] relating to the Status of Refugees."

B. Further amendment

Article 7 ter

2. Footnote 34 to article 7 *ter* in document A/AC.254/L.128/Add.2 should be expanded. Belgium suggests that article 7 *ter* be supplemented by article 110, paragraph 3, of the Convention on the Law of the Sea of 1982, the text of which would be reproduced there *in extenso*:

> "If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained."

Cameroon*

[Original: French]

Article 8: Compliance measures and arrangements

Paragraph 2 (a)

1. Delete the word "illegal" before the word "smuggling", this qualification being redundant.

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[1] United Nations, *Treaty Series*, vol. 189, No. 2545.

[2] Ibid., vol. 606, No. 8791.

* Amendments previously issued in document A/AC.254/L.102.

Article 11: Prevention

Paragraph 1

2. Delete the words "and seizing", since the operation of inspection is deemed sufficiently rigorous for the prevention stage.

Article 14: Training

Paragraph 3

3. Paragraph 3 should become article 14 *bis* and read as follows:

"Article 14 bis
"Technical cooperation

"Each State Party shall make every effort to provide the necessary resources, including vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise shall provide technical assistance to States lacking such expertise."

Article 15: Return of smuggled migrants

Paragraph 1

4. It would be advisable to reword this paragraph in the light of international human rights standards, the economic potential of each State and the length of stay of each migrant.

Canada*

[Original: English]

Article 4

Paragraph 7

1. Canada acknowledges that the purpose of the Migrants Protocol is not to criminalize migration or to victimize migrants. However, migrants who engage in criminal activity ought not be above the law in the State in which they find themselves, nor should a person who actively participates in a migrant smuggling ring (e.g. as an instigator or a provider of fraudulent documents) be immune from prosecution just because he or she can also claim to be a migrant.

2. Accordingly, Canada offers the following revised version of paragraph 7 of article 4:

"A person whose illegal entry [or residence] is procured, or intended to be procured, shall not be held responsible for an offence established in accordance with paragraph 1 (a)[3] of this article on the basis of the mere fact of having been smuggled. Nothing in this paragraph shall prevent a State Party from prosecuting or taking any

* Amendment previously issued in document A/AC.254/L.59.
[3] Amendment proposed by the United States of America.

other action against[3] a person whose conduct constitutes an offence under any other provision of this Protocol or under the domestic law of the State Party concerned."

Canada and United States of America*

[Original: English]

It is proposed that option 2 of article 4, paragraph 1, of the draft Protocol (A/AC.254/4/Add.1/Rev.2), be revised to read as follows:

"1. States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish the following conduct as criminal offences when involving an organized criminal group:

"(a) The smuggling of migrants; and

"(b) The intentional:

"(i) Making of a fraudulent travel or identity document used for international travel;

"(ii) Procuring or possessing of such a document for the purpose of providing it to persons involved in the smuggling of migrants; or

"(iii) Acting on such a document when such conduct is committed by a government official."

China**

[Original: English]

Article 7

1. After paragraph 10, insert a new paragraph as follows:

"(...) If the suspicion proves to be unfounded and the suspected vessel has not committed any act to justify further suspicion, a State Party that has taken action in accordance with this article shall make compensation for any loss or damage that may have been sustained by that vessel."

New article

2. After article 11, add a new article as follows:

"Article (...)
"Measures to eliminate the root causes

"States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes of the smuggling of migrants, such as poverty and underdevelopment."

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* Amendment previously issued in document A/AC.254/L.76.
** Amendments previously issued in document A/AC.254/5/Add.15.

France*

[Original: French]

Article 4: Criminalization

Paragraph 7

1. It is proposed that paragraph 7 should read as follows:

"A person whose illegal entry or illegal residence is procured or intended to be procured shall not be held responsible for an offence established in accordance with this Protocol in respect of the illegal condition of the person's entry or residence. Nothing in this paragraph shall prevent a State Party from prosecuting a person for other activities that would constitute an offence under the domestic law of the State Party concerned."

Article 9

2. It is proposed that article 9 should read as follows:

"Article 9
"Other measures

"1. States Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall include the establishment, without prejudice to the international conventions applicable, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

Germany

[Original: English]

1. During the informal consultations on articles 2, 3 and 5, a number of problems seem to have been due simply to the somewhat accidental ordering of articles. The German delegation would therefore like to propose the following reordering of articles in the opening section of the Protocol:

* Amendments previously issued in documents A/AC.254/L.77 and A/AC.254/L.104.

"Article 1 bis
"Aim and purpose

"1. The aim of this Protocol is to combat the smuggling of migrants committed by organized criminal groups. [*From article 5, paragraph 1.*]

"2. Its purposes in this context are:

"(a) To establish the smuggling of migrants as a criminal offence under the respective national laws of States Parties; [*From article 3 (a).*]

"(b) To promote and facilitate cooperation among States Parties to prevent, investigate and prosecute the crime of smuggling of migrants. [*From article 3 (b).*]

"Article 3

[*To be deleted, as its contents have been transferred to new article 1 bis.*]

"Article 5

"1. [*To be deleted, as it is now contained in new article 1 bis.*]

"2. *Should become a separate article in the form of a general safeguard clause, which would also cover, in addition to the 1951 and 1967 refugee instruments as currently contained in article 5, paragraph 2, obligations of States under human rights law and humanitarian law.*]"

2. The proposed merger of parts of articles 3 and 5 and their positioning before the definition section in article 2 would make it clear that what States are aiming at is organized smuggler groups. In addition, the reordering and recombination makes the text more readable. The other Protocols should follow the same structure.

Article 7 ter: Safeguard clauses*

Paragraph 3

3. Add the words "When taking such action against a ship," at the beginning of subparagraph (a), and reverse the order of subparagraphs (a) and (b). The reason for this addition and the reversal of the subparagraphs is that, as the text now stands, States simply cannot comply with what is required. They cannot "ensure the safety and humane handling of the persons on board" as such and in general, except if and when they take action against the ship.

Article 10: Information*

Paragraph 3

4. After the words "States Parties" add the words ", in particular those with common borders or located along smuggling routes,".

* Amendments previously issued in document A/AC.254/L.97.

Holy See*

[Original: English]

Article 11: Prevention

The following paragraphs should be added at the end of the article:

"(...) States Parties shall foster development programmes and cooperation at the national, regional and international levels, paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the trafficking in migrants.

"(...) States Parties shall encourage cooperation on immigration and asylum policies and shall adopt such global migration strategies as may be necessary to prevent trafficking in migrants."

India**

[Original: English]

Article 4: Criminalization

Paragraph 2

1. Replace paragraph 2 with the following:

"2. States Parties that have not yet done so shall adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"(a) Intentionally making, procuring or providing a fraudulent travel or identity document for the purpose of smuggling migrants; or

"(b) Causing a fraudulent travel or identity document to be used, possessed, dealt with or acted upon for the purpose of smuggling migrants."

Paragraph 3

2. Replace paragraph 3 with the following:

"3. Each State Party shall also adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"(a) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in paragraphs 1 and 2 of this article;

"(b) Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"(c) Participating as an accomplice in an offence set forth in this article; or

"(d) In any other way contributing to the commission of an offence set forth in this article."

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* Amendment previously issued in document A/AC.254/5/Add.15.

** Amendments previously issued in document A/AC.254/L.58.

Libyan Arab Jamahiriya*

[Original: Arabic]

1. It is proposed to adopt either of the following two options for paragraph 2 of article 4:

Option 1

Paragraph 2 of article 4 would be moved to article 2 (Definitions), and paragraph 1 (a) of article 2 would then be revised to read:

"(a) 'Smuggling of migrants' shall mean the intentional procurement for profit of the illegal transportation or entry of a person into or the illegal residence of a person in a State of which the person is not a national or a habitual resident. That procurement shall cover the following:

"(i) Preparing the necessary documents for entry into or residence in another State;

"(ii) Dealing with the documents mentioned in subparagraph (a) (i) of this paragraph;

"(iii) Planning the transfer, transportation or entry into or residence in another State of any of the persons referred to in this paragraph;

"(iv) Supervising or financing the transportation of persons or providing them with the means of transportation into another State;

"(v) Facilitating the illegal entry of persons into another State;

"(vi) Facilitating the illegal residence in another State of any of the persons referred to in this paragraph;

"(vii) Committing corruption for the purpose of facilitating the actions referred to in subparagraphs (a) (i) to (vi) of this paragraph."

Option 2

A new subparagraph would be added after paragraph 1 (a) of article 2 to read:

"(...) Any of the following kinds of conduct shall be considered as constituting smuggling of migrants:

"(i) Preparing the necessary documents for entry into or residence in another State;

"(ii) Dealing with the documents mentioned in subparagraph (a) (i) of this paragraph;

"(iii) Planning the transfer, transportation or entry into or residence in another State of any of the persons referred to in this paragraph;

"(iv) Supervising or financing the transportation of persons or providing them with the means of transportation into another State;

"(v) Facilitating the illegal entry of persons into another State;

* Amendments previously issued in documents A/AC.254/L.62 and A/AC.254/L.101.

"(vi) Facilitating the illegal residence in another State of any of the persons referred to in this paragraph;

"(vii) Committing corruption for the purpose of facilitating the actions referred to in subparagraphs (a) (i) to (vi) of this paragraph."

2. The reason for this change is to qualify the types of conduct set forth in paragraph 2 (a) of article 4 as smuggling of migrants, in order to achieve consistency with the purposes of the Protocol, referred to in article 3, and with the scope of the Protocol, provided for in article 5. Such a change would satisfactorily establish this conduct as a crime (smuggling of migrants) under article 4, paragraph 1, of the Protocol. Accordingly, the first part of paragraph 2 should be deleted; paragraph 3 should become paragraph 2 and be reformulated to clarify its intended purpose, that is, criminalization of the attempt to commit an offence and of criminal participation in both its forms, principal and ancillary (instigation, assistance and condonation); and a new paragraph 3 should be added to provide that the provisions of the Protocol or the provisions of criminalization contained therein do not apply to the persons smuggled. This should not eliminate the possibility of punishing them in accordance with the domestic legislation of each State, as is the case at present in all States.

3. Pursuant to the above, paragraph 3 of article 4 should be revised to read:

"(...) Each State Party shall also adopt the necessary legislation to establish as a criminal offence the following conduct:

"(a) Attempting to commit any of the offences established in paragraph 1 of this article;

"(b) Participating as a principal or as an accomplice, by means of instigation, assistance or condonation, in any of the offences referred to in paragraph 1 of this article.

"(...) The provisions of this article shall be without prejudice to the provisions of paragraph 7 of this article."

General remarks

4. The term "migrants" used in the title of the revised draft Protocol is not accurate and should be replaced with a more appropriate term such as "smuggling of persons" or "forcibly migrated persons", because a migrant is a person who willingly and freely migrates, whereas a forcibly migrated person is one whose transfer to another country takes place against his will or by criminal design resulting from compulsion or deception, similar to the offence of abduction under domestic law.

5. Since this draft Protocol is closely related to the draft Protocol relating to trafficking in persons, the Libyan Arab Jamahiriya suggests that the two draft Protocols should be merged into a single instrument.

6. As in many cases the person organizing the migration is also involved in trafficking in persons, and as long as the aim of such a process, according to the relevant definition, is one of profit-making, then that activity is a type of trafficking and can hardly be differentiated from it. Another reason for the need to merge the two draft Protocols into a single instrument is that there are cases in which the "smuggler" is the person involved in the trafficking in persons, in which case it would be difficult to identify the applicable instrument, so the merging of the two draft Protocols would help solve certain

controversial issues, which would subsequently lead to economy of time and effort, in particular in connection with the common articles of the two draft Protocols.

7. The draft fails to deal with the protection of migrants in cases where they are the victims of abduction, especially with regard to their exploitation by those benefiting from smuggling in the receiving State and their mistreatment, which will be out of the control of the authorities of that State, because the smuggler exploits the illegal status of the victim by keeping him/her under the threat of reporting his/her status to the authorities.

8. The draft Protocol makes no mention of preventive measures, which are an important tool in combating and curbing smuggling of persons, especially the prevention of the causes behind migration, whether economic, political or personal. If those causes are not dealt with, then smuggling will continue, no matter how strong the remedial measures.

Remarks on the articles under consideration*

Article 7: Measures against the smuggling of migrants by sea

Paragraph 3

9. Subparagraph (c) mentions "persons and cargo on board" vessels, although the draft Protocol has nothing to do with goods and deals specifically with smuggling of persons.

Paragraph 6

10. In the second sentence, provision is made for the exception of necessary actions "to relieve imminent danger". The phrase used lacks clarity and should be replaced with the words "except those which might be taken in implementation of existing binding agreements".

Paragraph 7

11. The words "or, where necessary, authorities," are not useful and should be deleted.

Paragraph 8

12. In the first sentence, replace the word "concluded" with the word "classified", because "concluded" is ambiguous and not defined.

Paragraph 9

13. The right of inspection by a State Party should be restricted by an obligation to notify the State Party of which the vessel claims registry, if it is found that the vessel in effect belongs to a State Party, before continuing the inspection or taking any necessary measures.

* Based on the text of the revised draft Protocol contained in document A/AC.254/Add.1/Rev.2.

Article 8: Compliance measures and arrangements

Paragraph 2

14. The Libyan Arab Jamahiriya suggests the deletion of subparagraph (b), because enhancing the provisions of the Protocol will be a sine qua non once the Protocol comes into force, so there will be no need for such a provision.

Article 9: Additional legislative and administrative measures

15. In the first sentence, the word "administrative" should be used instead of the word "legislative", in line with the wording of paragraph 1 of article 8.

16. In the second sentence, the reason for using the word "forfeiture" should be clarified, because it is ambiguous here.

Article 10: Information

Paragraphs 1 and 2

17. Paragraphs 1 and 2 should be merged, because their meaning is identical. The revised paragraph should read as follows:

> "Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information with a view to preventing potential migrants from becoming victims of criminal organizations by increasing public awareness of the fact that smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to those involved."

18. In subparagraph (e), the word "also" should be added after the words "practices and".

Article 14: Training

Paragraph 2

19. Subparagraph (a) should be deleted because it duplicates article 12.

Paragraph 3

20. The words "potential tools" should be used instead of the word "resources", because the articles listed in the text are not resources but potential tools.

Article 15: Return of smuggled migrants

Paragraph 1

21. Add at the end of the paragraph the words "whenever such return poses no risk to his or her life and protects him or her from any illegal harm that might be incurred upon return".

Article 16: Implementation

22. Paragraphs 1 and 2 should be merged to read:

> "For the purpose of examining the progress made by the States Parties in achieving the implementation of the obligations undertaken in the present Protocol, the States Parties will provide periodic reports to the Conference of the Parties to the Convention. States shall provide such reports together with the reports submitted in accordance with article 23 of the Convention and on the same dates."

Lithuania*

[Original: English]

Article 4: Criminalization

Paragraph 7

1. Lithuania considers that paragraph 7 of article 4 is formulated in a slightly inaccurate way and would like to point out that the provisions of the Protocol, as an international agreement, cannot be treated as the basis of penal responsibility of a person.

Article 9: Additional legislative and administrative measures

2. Lithuania would like to point out that, on the basis of the *non bis in idem* principle, the sanctions provided for in article 9 may be applied to commercial carriers only in cases where no actions are brought against them for smuggling migrants. Lithuania ventures to express the view that the current wording of the article may leave it open to interpretation as stipulating that, on the basis of the same *non bis in idem* principle, commercial carriers guilty of smuggling migrants should bear administrative responsibility only and not be charged for smuggling migrants.

Article 10: Information

Paragraph 2

3. Paragraph 2 of article 10 of the draft Protocol would obligate States Parties to undertake preventive measures ensuring that potential migrants do not become victims of crimes committed by organized criminal groups. Lithuania would like to draw attention to the fact that the draft Convention could set obligations to take preventive measures ensuring the rights not only of potential migrants, but also those of migrants in the process of being transported and migrants who have already been transported.

4. In the opinion of Lithuania, the use of the term "victim" raises some doubts. The term "victim" suggests illegal violence used against a person. Lithuania therefore considers that in a case where a migrant may be considered the victim of a crime, the crime itself shall be recognized as trafficking in persons and not as smuggling migrants.

* Amendments previously issued in documents A/AC.254/L.55 and A/AC.254/5/Add.15.

Morocco*

[Original: French]

Morocco proposes the following text as either paragraph 8 of article 4 (Criminalization) or a new article 4 *bis*:

> "(...) States Parties that have not yet done so shall adopt the necessary legislation or other measures to guarantee respect for and protection of the rights of migrants in irregular situations, as accorded under applicable international law, in particular the right to life, the principles of non-discrimination and *non-refoulement* and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

Netherlands

[Original: English]

Article 11

The Netherlands proposes to add a new paragraph at the end of the article:

> "(...) With a view to promoting and accelerating cooperation between the relevant authorities, States Parties may conclude bilateral or regional agreements providing for the secondment of liaison officers from one State Party to relevant authorities of the other State Party. The liaison officer shall have the task of giving advice and assistance and of facilitating the secure and rapid exchange of information. He shall have no operational powers and shall respect the integrity of the host country."

Philippines

[Original: English]

Article 12: Control of documents

1. The Philippines proposes to add a new paragraph at the end of the article:

> "(...) States Parties shall adopt such measures as may be necessary to ensure the security of all materials used in the production of travel documents and shall, from time to time, initiate innovations in these materials to upgrade the security of travel documents."

2. This is necessary to prevent organized criminal syndicates from manufacturing fake travel documents using materials similar to those used in the manufacture of genuine travel documents.

* Amendment previously issued in document A/AC.254/L.60.

Singapore

[Original: English]

Article 7 bis

Paragraph 1

1. Singapore proposes to insert the words "in international waters" after the words "exercising freedom of navigation" in order to clarify the provision so as to ensure that the exclusive right of coastal States to exercise enforcement jurisdiction in territorial waters remains unaffected.

Paragraph 6

2. The words ", while in international waters," should also be inserted after the words "to suspect that a vessel" in paragraph 6, for the same reason as above, that is, to remove any ambiguity over the exclusive right of coastal States to exercise enforcement jurisdiction within territorial waters.

Syrian Arab Republic*

[Original: Arabic]

Preamble

1. Remove the square brackets in subparagraphs (a), (c), (d), (f)-(h), (o) and (q).

2. After subparagraph (q), add a new subparagraph similar to the final subparagraph of the preamble of the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking Protocol"), to read as follows:

> "(...) *Taking into account* the provisions of the United Nations Convention against Transnational Organized Crime."

Article 4: Criminalization

Paragraphs 1-3

3. Remove the square brackets.

Paragraphs 1-3, 5 and 6

4. Add, where appropriate, the words "in accordance with their basic legal principles".

Paragraph 7

5. Add the words "for the crime of smuggling of migrants" after the word "punishable".

* Amendments previously issued in documents A/AC.254/L.46 and A/AC.254/5/Add.15.

Article 6: Jurisdiction

Paragraph 1

6. Add the words "in accordance with their basic legal principles" after the words "shall take".

Paragraph 2

7. This paragraph should be consistent with article 9 of the Convention.

Article 7: Measures against the smuggling of migrants by sea

Paragraph 5

8. Delete the phrase "and to a request for authorization made pursuant to paragraph 3 of this article" because the phrase would obligate the State Party to respond to the requested authorization, while paragraph 3 of this article allows the flag State to authorize the requesting State to board and inspect the vessel and to take appropriate action.

Paragraph 14

9. The meaning of the words "operational arrangements in relation to specific cases" needs to be clarified.

Additional paragraph

10. The Syrian Arab Republic endorses the proposal made by China to add a new paragraph after paragraph 10 (see above under **China**).

Article 8: Compliance measures and arrangements

Paragraph 1

11. Add the words "in accordance with their basic legal principles" after the word "adopt".

Paragraph 2

12. Delete the word "illegal" in subparagraph (a), because trafficking is per se an illegal act.

Article 9: Additional legislative and administrative measures

13. Add the words "in accordance with their basic legal principles" after the words "shall take".

14. The word "forfeiture" needs to be clarified.

Article 11: Prevention

15. The Syrian Arab Republic endorses the two paragraphs proposed by the Holy See for addition to this article (see above under **Holy See**).

Article 11 bis

16. The Syrian Arab Republic endorses new article 11 *bis*, proposed by China (see above under **China**).

Additional articles

17. Articles relating to the following issues should be added:

(a) Assistance for and protection of victims of trafficking in persons, in line with article 4 of the Trafficking Protocol;

(b) Status of the victim in the receiving State, in line with article 5 of the Trafficking Protocol;

(c) Seizure and confiscation of gains, in line with article 5 *bis* of the Trafficking Protocol.

United States of America

[Original: English]

Article 9

The United States of America proposes the following amended text for article 9:

"Article 9
"Other measures

"1. States Parties shall take legislative or other measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

United Nations A/AC.254/5/Add.22

General Assembly

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Proposals and contributions received from Governments

Addendum

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V.00-50665 (E)

II. Proposals and contributions received from Governments

Australia: amendment to the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime*

[Original: English]

Article 2: Definitions

Australia proposes the insertion in article 2 of a new subparagraph to follow subparagraph (c):

"(...) 'Deactivated firearm': a firearm that has been modified in accordance with the principles established in article 10 of this Protocol so that it cannot expel a shot, bullet, other missile or projectile and cannot be readily converted to do so."

Belgium**

[Original: French]

Article 4: Scope

The following new paragraph should be added:

"(...) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law shall not be governed by this Protocol."

Canada***

[Original: English]

Article 2: Definitions

The following amendment is proposed for subparagraph (d) of article 2:

"(d) 'Illicit manufacturing': the manufacturing or assembly of firearms and ammunition:

"(i) From components or parts illicitly trafficked;

"(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

"(iii) Without marking the firearms at the time of manufacture."

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* Amendment previously issued in document A/AC.254/L.148.

** Amendment previously issued in document A/AC.254/5/Add.18.

*** Amendment previously issued in document A/AC.254/L.129.

China

[Original: Chinese and English]

A. Amendments previously issued in document A/AC.254/5/Add.18

Article 4: Scope

1. China proposes that article 4, on scope, should read as follows:

> "This Protocol applies to all classes of commercially traded and manufactured firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security or to firearms manufactured exclusively to equip a State Party's own army or security force."

Article 9: Marking of firearms

Paragraph 1 (a)

2. Manufacturers in China are obliged by law to put the appropriate marking on every firearm at the time of its production, regardless of what the firearm is destined to be used for (i.e. whether it is for military use or civilian use). However, markings may differ depending on what the firearms are to be used for. China is of the view that the criteria for determining what is an appropriate marking should be whatever enables the competent agency of a State Party to trace the source of the firearm. Therefore, it would be sufficient to require the marking to include the country of manufacture while leaving it to each State Party to decide what other information should be included in the marking. To make it more convenient to identify the country of manufacture, a universal system of country codes could be considered.

Paragraph 1 (b)

3. China does not require the marking of imported firearms. More consideration and discussion should be given to the provision in paragraph 1 (b) as it appears now. Bearing in mind the various practices in different countries concerning imported firearms, it might be sufficient for firearms to bear unique and identifiable markings that are recorded in full during the process of exporting and importing the firearms. Thus, paragraph 1 (a) of article 9, in combination with paragraph 1 (a) of article 8, could solve the problem of tracing imported firearms, thus relieving States Parties of the task of having to make changes in their current legislation and practices. In any case, the importing countries could decide whether to mark the imported firearms or not following their importation.

Article 10: Preventing the reactivating of deactivated firearms

4. China supports the idea of preventing the reactivating of deactivated firearms, but the provision in article 10 needs further clarification.

Article 11: General requirements for export, import and transit licensing or authorization systems

5. As for article 11, China has no particular difficulty with the requirements regarding export and import, but it has reservations with regard to transit licensing and retransfer authorization as the relevant provisions need to be clarified further. First and foremost, the

definition of "transit" itself needs further clarification. In the view of China, the requirement of transit licensing inevitably imposes a heavier burden on the transit country. Besides, whether it is the importer or the exporter who should apply for the transit licence is not clear in the current provision. The relationship between transit and trans-shipping also needs clarification.

6. With regard to the requirement for written approval from the exporting country prior to re-export or retransfer, China is of the view that how to dispose of the imported firearms is the sovereign right of the importing country because, in general, once goods are delivered to the importer, the right of ownership is passed on to the importer, who in turn is responsible for the disposition of the goods. End-user certification could help to prevent the re-export or retransfer of firearms without the approval of the exporting country.

Article 14: Exchange of information

Paragraph 1

7. In paragraph 1, China proposes to add the words "and taking into account their legitimate security or commercial concerns," after the words "applicable to them".

Article 17: Confidentiality

8. China proposes to modify the last sentence in article 17 to read as follows:

> "If for legal reasons such confidentiality cannot be maintained, the State Party that is to provide the information shall be notified prior to its provision of the information."

B. Position paper previously issued in document A/AC.254/L.137

9. China attaches importance to combating the illicit manufacturing of and trafficking in firearms and supports intensified cooperation by the international community in drafting a protocol on that subject within the framework of the negotiation of the draft United Nations Convention against Transnational Organized Crime. It has, therefore, actively participated in the work of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime in developing the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (the "Firearms Protocol").

10. Since the establishment of the Ad Hoc Committee, the various parties have, on a preliminary basis, exchanged their views on the framework and the various articles of the draft Firearms Protocol. China maintains that, pending further in-depth discussions, it is necessary for the Ad Hoc Committee to review several issues of fundamental importance concerning the draft Firearms Protocol so as to ensure that the Ad Hoc Committee moves in the right direction and proceeds smoothly in its work. Such issues include how to interpret the mandate of the Ad Hoc Committee in the relevant General Assembly resolutions, how to balance the relationship between the efforts in preventing and combating crime and the efforts in disarmament and arms control and how to straighten out the relationship between the control of legitimate manufacturing and transfer of firearms and the fight against illicit manufacturing of and trafficking in firearms.

I. The mandate of the Ad Hoc Committee in the relevant General Assembly resolutions

11. In its resolution 53/111 of 9 December 1998, entitled "Transnational organized crime", the General Assembly decided to establish an intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments on three issues, including combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. In its resolution 53/114 of 9 December 1998, entitled "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity", the Assembly called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention against transnational organized crime, as well as, as appropriate, of international instruments on the three issues, including combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

12. In its resolution 54/126 of 17 December 1999, entitled "Draft United Nations Convention against Transnational Organized Crime and the draft protocols thereto", the General Assembly requested the Ad Hoc Committee to continue its work in accordance with resolutions 53/111 and 53/114 and to intensify its work in order to complete it in 2000. In the same resolution, the Assembly requested the Ad Hoc Committee to schedule sufficient time for the negotiation of the three draft protocols to the Convention, including the draft Firearms Protocol, in order to enhance the possibility of their completion at the same time as the draft Convention.

13. Taking into account the above-mentioned resolutions, China maintains that the Firearms Protocol should be developed, within the framework of the negotiation of the draft United Nations Convention against Transnational Organized Crime, primarily to prevent and combat crime and that the purpose of the Firearms Protocol should be strictly confined to combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The above-mentioned General Assembly resolutions do not require Member States to restrict their legitimate manufacturing and transfer of firearms and still less to expand the scope of the definition of the term "firearms". Restricting the legitimate manufacturing and transfer of firearms is, in essence, an arms control issue. If the definition of the term "firearms" is expanded to cover landmines, missiles or other conventional weapons, a series of problems will arise in the development of the draft Firearms Protocol. Given that the terms "landmines" and "missiles" have their own definitions, to incorporate them into the definition of "firearms" would give rise to confusion regarding the concepts involved and would cause the Firearms Protocol to lose its focus. Moreover, there already exist international legal instruments that place restrictions on landmines and other weapons. To make different provisions within the framework of the Firearms Protocol would create confusion from a legal standpoint, making it difficult for the States Parties to implement the relevant provisions of the Protocol in the future.

14. In sum, developing the draft Firearms Protocol strictly in accordance with the mandate in the relevant General Assembly resolution is the key to success in the negotiation of the Protocol and will have a direct bearing on its universality.

II. The relationship between efforts aimed at preventing and combating crimes and efforts in arms control and disarmament

15. There are ongoing discussions on combating through arms control and disarmament the illicit transfer of small arms. The Group of Governmental Experts on Small Arms has submitted a report to the General Assembly at its fifty-fourth session (A/54/258). In addition, at its 1999 session, the Disarmament Commission adopted by consensus the guidelines on conventional arms control/limitation and disarmament, with particular emphasis on consolidation of peace in the context of General Assembly resolution 51/45 N.[1] The above-mentioned report and guidelines have, from an arms control and disarmament perspective, already covered some measures on small arms.

16. China is of the view that there are both similarities and differences between the above-mentioned efforts in arms control and disarmament and efforts in combating the illicit manufacturing of and trafficking in firearms for the purpose of preventing and combating crime. In both cases, the efforts are aimed at promoting security. The main difference lies in the fact that the efforts aimed at preventing and combating crimes are focused on safeguarding public security and combating criminal activities involving the illicit manufacturing of and trafficking in firearms so as to ensure the well-being of nations; however, the arms control and disarmament efforts are focused primarily on safeguarding the military security of each country, allowing the legal manufacture and transfer of arms to fulfil its legitimate defence needs. And the measures taken in the two fields are different in terms of their focus and priority.

17. In accordance with the mandate in the relevant General Assembly resolutions, the Ad Hoc Committee should confine its work on the draft Firearms Protocol to the area of preventing and combating crime in its drafting of each article of the Protocol. China is opposed to any attempt to go beyond the mandate of the Ad Hoc Committee and indiscriminately expand the scope of the definition of such basic concepts as firearms, as well as the scope of application of the Firearms Protocol, under the pretext of preventing and combating crime. Likewise, China is opposed to any attempt to turn the Protocol into a mechanism for controlling the manufacture, import, export or transfer of all conventional weapons other than heavy weapons.

III. The relationship between the control of the legitimate manufacturing and transfer of firearms and the fight against the illicit manufacturing of and trafficking in firearms

18. It is true that the control of the legitimate manufacturing and transfer of firearms is, to some extent, related to the fight against the illicit manufacturing of and trafficking in firearms and that appropriate management and regulation of the legitimate manufacturing and transfer of firearms are conducive to curbing and combating the illicit manufacturing of and trafficking in firearms. It is nevertheless undesirable to put the cart before the horse. If the Firearms Protocol includes undue restrictions on the legitimate manufacturing and transfer of firearms, it will not only go beyond the mandate in the relevant General Assembly resolutions, but it will also deviate from its original purposes. Should that be the case, it will not be possible to curb effectively the illicit activities targeted in the Protocol; at the same time, however, legitimate activities may, as a result, be affected, thus rendering the Protocol meaningless.

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 42* (A/54/42), annex III.

19. Furthermore, each sovereign State should decide how to control or regulate the legitimate manufacturing and transfer of firearms on its territory. Given that conditions may vary from one country to another, the judiciary systems, laws and regulations may also vary from one country to another. Moreover, measures and systems suitable to one country or region may not be applicable to or effective in other countries or regions. Therefore, in developing the Protocol, it is, in principle, undesirable to introduce restrictions on the legitimate manufacturing and transfer of firearms in a country, and it is even less desirable to seek a common approach to be followed in each and every country or region.

IV. The deadline for the conclusion of the negotiations on the Firearms Protocol

20. In its resolution 54/126, the General Assembly requested the Ad Hoc Committee to intensify its work in order to complete it in 2000. However, given the gravity and complexity of the issue of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, China maintains that the Ad Hoc Committee should, in the first place, regard as its primary objective the drafting of a good, comprehensive protocol that can offer genuine solutions to problems. While striving to conclude its work on the Firearms Protocol at an early date, the Ad Hoc Committee should nevertheless attach more importance to the quality of the Protocol, so that, where possible, the concerns of the various parties may be addressed. Otherwise, the universality of the Firearms Protocol will be affected, even if it is possible to conclude a hasty agreement, as such a protocol will hardly be able to meet the concerns of the various parties. That, in the view of China, would not be conducive to strengthening cooperation among States in combating illicit manufacturing of and trafficking in firearms, thus making it difficult to achieve the original objective of the Firearms Protocol.

21. The delegation of China is ready to cooperate actively and to work together with all other delegations in a common effort to enable the Ad Hoc Committee to conclude early its work on a protocol that will meet the concerns of all parties.

Colombia*

[Original: English]

Preamble

1. It is proposed that a new paragraph be added to read as follows:

> "(...) *Convinced* that the illicit international trade in firearms, their parts and components, ammunition, explosives and other related materials constitutes a specific risk to the security and well-being of States Parties and that measures to promote further cooperation among States Parties, in particular by the promotion of harmonized controls over the legal import and export of firearms, their parts and components, ammunition, explosives and other related materials and of procedures for applying them, will assist in preventing and eradicating such illicit trade."

Article 2: Definitions

2. The following new subparagraph should be added:

* Amendments previously issued in document A/AC.254/5/Add.18.

"(...) 'In-transit country' shall mean the country through which a shipment is moved, which is neither the country of origin nor the country of final destination."

Article 3: Purpose

3. The following new subparagraph should be added:

"(...) To set out harmonized measures and procedures for monitoring and controlling the international movement of firearms, parts and components, ammunition, explosives and other related materials, in order to prevent their illicit trafficking and diversion for illegal uses and purposes."

Article 4: Scope

4. The following new option should be added:

"Option ...

"This Protocol shall apply in national jurisdictions, free-trade zones, free ports and other customs divisions."

Article 5: Criminalization

5. The following new subparagraphs should be added to paragraph 1:

"(...) The purchase or possession of illicitly manufactured or trafficked firearms, their parts and components, ammunition, explosives and other related materials;

"(...) The organization, management or financing of the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials."

6. Paragraph 2 should be amended to read as follows:

"2. The participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this Protocol shall also be considered criminal offences."

7. Paragraph 3 should be amended to read as follows:

"3. Each State Party shall make the person or persons who commit any of the offences established in accordance with this Protocol subject to criminal sanctions that take into account the grave nature of the offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation. This provision should be interpreted without prejudice to the administrative, civil and other forms of sanctions that may apply."

8. The following new paragraphs should be added:

"(...) States Parties shall ensure that their courts and other competent authorities having jurisdiction over the offenders under this Protocol take into account, when prosecuting such offenders, factual circumstances that make the commission of offences established in accordance with this Protocol particularly serious, such as:

"(a) Involvement in the offence of an organized criminal group to which the offender belongs;

"(b) Involvement of the offender in other international organized criminal activities;

"(c) Involvement of the offender in other illegal activities facilitated by the commission of the offence;

"(d) The violent use of illicitly trafficked arms and explosives by the offender;

"(e) The fact that the offender holds a public office, whether or not the offence is connected with the office in question;

"(f) The use of minors in the commission of an offence listed in this article.

"(...) States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences established in accordance with this Protocol and the circumstances described in article 5, paragraph 4, of this Protocol when considering the sanctions to be imposed on the offender.

"(...) Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of the legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Article 8: Record-keeping

9. Replace paragraphs 1 and 2 with the following:

"1. Each State Party shall maintain its own records of import, export and in-transit shipments of firearms, their parts and components, ammunition, explosives and other related materials, recording, classifying and describing the actual quantities and [proceeding] involved in each shipment transaction. In the case of export and import transactions, records shall be maintained by the appropriate authorities that reflect the quantities of firearms, their parts and components, ammunition, explosives and other related materials remaining to be exported or imported, as the case may be, based on the corresponding certificates.

"2. Records shall be kept for a period of not less than five years after the last transaction effected under the corresponding certificate, to enable each State Party to trace and identify illicitly manufactured and trafficked firearms, their parts and components, ammunition, explosives and other related materials. States Parties shall identify to one another the authority responsible for record-keeping."

10. The following new paragraph should be added:

"(...) States Parties that already possess computerized information systems and the associated technical competence and expertise shall agree to share that technology and knowledge with interested participating States Parties, in order to facilitate and harmonize record-keeping and information-sharing."

Article 9: Marking of firearms

11. The title of article 9 should read "Marking of firearms, ammunition and explosives".

12. The following new subparagraphs should be added to paragraph 1:

"(...) Require appropriate markings to be applied to ammunition, by head-stamping or embossing on the base of each cartridge case during the manufacturing process numbers, letters, trademarks, symbols or other codes used to identify the country or factory of origin, the year of production, the lot number and the calibre;

"(...) Require appropriate markings on the packaging of ammunition and explosives (military explosives, commercial explosives and their associated accessories, including detonators and blasting caps), including detailed information about their designation, nature, calibre, type, manufacturer, year and lot of manufacture, as well as other codes associated with transport and storage safety."

Article 11: General requirements for export, import and transit licensing or authorization systems

13. The following new paragraphs should be added:

"(...) Pursuant to article 3, subparagraph (c), of this Protocol, harmonized measures and procedures for monitoring and controlling the international movement of firearms, their parts and components, ammunition, explosives and other related materials include the following documentation:

"(a) Export certificates. An export certificate shall accompany each shipment. Each export certificate shall contain at a minimum the information required by all States, as outlined in the annex to this Protocol;

"(b) Export attachment. The export attachment shall contain information required by all States, with the serial numbers of the firearms, their parts and components, ammunition, explosives and other related materials being shipped, within each classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, and specifying all shipping modes and shippers, as outlined in the annex to this Protocol;

"(c) Import certificate. An import certificate shall be given to an applicant who meets the applicable domestic legal requirements and provides the applicable information. The import certificate shall contain at a minimum the information required by all States, as outlined in the annex to this Protocol;

"(d) In-transit shipment authorization. The competent authority of an in-transit country shall issue an in-transit shipment authorization to an applicant who meets the pertinent domestic legal requirements, who provides the information required and who supplies an original or a certified copy of the import certificate issued by the country of final destination and an original or a certified copy of the export certificate and export attachment, as described in article 5 of this Protocol and outlined in the annex to this Protocol;

"(e) Verifying competent authority. Where applicable, the importing country shall release the shipment to the person who satisfies the competent authority that he or she is the authorized representative identified on the import certificate, upon confirming that the contents of the shipment and the identity of the importer or final recipient are in accordance with the information specified in the import certificate, export certificate and export attachment, and that the importer or final recipient meets the applicable domestic requirements.

"(...) The following general conditions shall apply to all certificates, attachments and authorizations:

"(a) *Validity period for import certificates, export certificates and attachments and in-transit shipment authorization*. Each import certificate shall specify an expiry date (generally considered to be one year from the date of issue). Each export certificate and export attachment and in-transit shipment authorization shall specify a maximum validity period that shall not extend beyond the expiry date of the import certificate;

"(b) *No extension of the validity period*. The validity period of all certificates, attachments and authorizations granted shall not be extended. Upon expiry of the validity period of a certificate, attachment or authorization, a new application must be submitted;

"(c) *Authorized quantities*. All import certificates, export certificates or attachments, or in-transit shipment authorizations shall indicate the authorized quantities of each type of firearm, parts and components or ammunition and explosives, as the case may be, duly identified by its applicable form of classification and description, that may be shipped pursuant to those documents;

"(d) *Authenticity of certificates and other documents*. To ensure the authenticity of all certificates, attachments and authorizations and any other documentation required to be submitted to authorities under these regulations, only original and certified copies shall be accepted or, if agreed to by the competent authorities of the countries concerned, the documentation may be transmitted by electronic means;

"(e) *Modification of certificates and other documents*. The modification of certificates, attachments and authorizations shall only be permitted to be made by the competent authority within the validity period and with respect to the following matters:

"(i) For all certificates: the country of origin of firearms, their parts and components, ammunition, explosives and other related materials for export;

"(ii) For export attachments and in-transit shipment authorizations: planned shipment information, shipping routes, ports of entry and exit, modes of shipment, shipping dates and shippers for individual shipments;

"(iii) All changes except [...] shall require authentication, such as stamps, seals and authorized signatures, on the front side of the modified certificates or other documents.

"(...) The steps to be followed for the exportation of firearms, their parts and components, ammunition, explosives and other related materials are:

"(a) The competent authority of the country of export may issue an export certificate to an applicant who:

"(i) Meets the applicable domestic legal requirements;

"(ii) Provides the applicable information outlined in the annex to this Protocol; and

"(iii) Supplies the original or a certified copy of the import certificate referred to in article [5] of this Protocol;

"(b) The competent authority shall only authorize the export of firearms, their parts and components, ammunition, explosives and other related materials pursuant to an export certificate when the applicant provides to the competent authority the export attachment information outlined in the annex to this Protocol. The export attachment information may be provided on a portion of the export certificate or on an export attachment;

"(c) Where the firearms, their parts and components, ammunition, explosives and other related materials are to pass through an in-transit country or countries before reaching the country of final destination, the exporter shall also provide to the verifying agency of the country of export an in-transit shipment authorization from each in-transit country;

"(d) The competent authority shall send the original or a certified copy of the export certificate and export attachment, including the information outlined in the annex to this Protocol, to the verifying agency of the importing country and, where applicable, to the competent authority of each in-transit country;

"(e) The shipper identified by the exporter on the export attachment shall present the firearms, their parts and components, ammunition, explosives and other related materials, together with the original or a certified copy of the export certificate and export attachment, to the verifying agency of the exporting country and, upon verification by the latter, the shipment may be exported.

"(...) The steps to be followed for the importation of firearms, their parts and components, ammunition, explosives and other related materials are:

"(a) The competent authority of the importing country may issue an import certificate to an applicant who meets the applicable domestic legal requirements and who provides the applicable information outlined in the annex to this Protocol;

"(b) The importer shall provide an original or certified copy of the import certificate to the exporter for presentation to the competent authority of the country of export, as required under article [5] of this Protocol;

"(c) The verifying agency of the importing country, upon confirming that the contents of the shipment and the identity of the importer or final recipient are in accordance with the information specified in the import certificate, export certificate and export attachment, and that the importer or final recipient meets the applicable domestic requirements, shall release the shipment to the person who satisfies the verifying agency that he or she is the authorized representative identified on the import certificate.

"(...) Steps to be followed for an in-transit shipment are:

"(a) The competent authority of an in-transit country may issue an in-transit shipment authorization to an applicant who meets the applicable domestic legal requirements, who provides the information outlined in the annex to this Protocol and who supplies the following documents:

"(i) An original or a certified copy of the import certificate issued by the country of final destination; and

"(ii) An original or a certified copy of the export certificate and export attachment described in this article;

"(b) The recipient of the in-transit shipment authorization shall provide an original or certified copy of the authorization to the exporter for presentation to the verifying agency of the country of export, as required under this article;

"(c) The verifying agency of the in-transit country, upon confirming that the contents of the shipment and the identity of the shipper are in accordance with the information specified in the import certificate, export certificate, export attachment and in-transit authorization and that domestic legal requirements have been met, shall permit the in-transit passage of the shipment."

Article 14: Exchange of information

14. The following new paragraphs should be added:

"(...) Each State Party shall designate a central information office to receive and fulfil information requests from participating countries concerning import, export and in-transit shipment transactions of firearms, their parts and components, ammunition, explosives and other related materials. Where the information is required for judicial proceedings, it shall be provided on a basis consistent with existing agreements for such purpose.

"(...) Information on all known aspects of activities relating to the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials shall be provided to and collected by the International Criminal Police Organization for access by participating countries. If possible, States Parties shall make this information available in electronic form to facilitate the tracing and confiscation of the weapons and the capture of the offender."

Article 15: Cooperation

15. The following new paragraph should be added:

"(...) For the purpose of cooperation among States Parties to this Protocol, including, in particular, cooperation under article 9 of this Protocol, offences established in accordance with article 5, paragraph 1, of this Protocol shall not be considered fiscal offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic laws of the States Parties."

Article 18 bis: Registration and licensing of brokers

16. The title of article 18 *bis* should be amended to read "Registration and licensing of brokers, retailers and transportation agents".

17. The text of the article should be replaced with the following:

"To prevent and combat the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials, each State Party shall regulate and monitor, when applicable, legitimate commercial activities by licensing and registering all persons of its nationality who engage in such transactions, such as:

"(a) Retailers and wholesalers who buy and sell firearms, their parts and components, ammunition, explosives and other related materials;

"(b) Brokers who arrange such transactions (that is, persons who gain material benefit from financing or facilitating such transactions);

"(c) Transportation agents who arrange for the delivery of such goods (that is, persons who ensure the transportation of the goods so that the transactions may be completed)."

Annex

18. The following annex should be added:

"Annex

"1. All import certificates, export certificates or attachments or in-transit shipment authorizations shall indicate the authorized quantity of each type of firearm, parts and components, ammunition, explosives and other related materials (listed by classification and description) that may be shipped pursuant to those documents, as outlined in this annex.

"Export certificates

"2. Each export certificate shall contain the following information:

"(a) Domestic export certificate: identified by the country of issuance;

"(b) Country of issuance: identified by name or by a unique country code;

"(c) Date of issuance: in international date format;

"(d) Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing office's name and signature;

"(e) Exporter identification: the exporter's name, address, telephone number and facsimile number and the representative's name (if the exporter is a commercial body) and signature;

"(f) Exportation authorization: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for export, listed by classification and description;

"(g) Certificate expiry date: date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be shipped pursuant to the export certificate or the date of expiry of the certificate, whichever is earlier;

"(h) Importing country information (domestic import certificate): the name of the country of issuance, the date of issuance of the certificate, the competent authority, the importer and final recipient, the authorized quantity of firearms, their parts and components, or ammunition and explosives, and other related materials to be imported and the certified expiry date;

"(i) Importer identification: the importer's name, address, country code of residence and citizenship (if the importer is an individual) and the representative's name (if the importer is a commercial or government body);

"(j) Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, country code of residence and citizenship if the final recipient is an individual and the representative's name if the final recipient is a commercial or government body;

"(k) Country of origin of the firearms, parts and components, ammunition, explosives and other related materials: the name or unique country code;

"(l) Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) shipped to date pursuant to the export certificate;

"(m) Additional descriptive information concerning the firearms, parts and components that is required in some countries, such as barrel length, overall length, action, the number of shots, the manufacturer's name and the country of manufacture.

"Export attachments

"3. Each export attachment shall contain the following information:

"(a) Shipment information: the serial numbers of the firearms, parts and components, ammunition, explosives and other related materials (where applicable) being shipped, listed by classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, specifying all shipping modes and shippers;

"(b) For each shipper identified above: the shipper's name, address, telephone number and facsimile number, and the representative's name and signature (if the shipper is a commercial or government body);

"(c) Information on prior shipments, if any, made against the export certificate and the dates of exit of previous shipments: the quantity of the firearms, parts and components, ammunition, explosives and other related materials involved (listed by classification and description) in each shipment, the cumulative quantity of all shipments sent prior to this shipment and the shipper's name.

"Import certificates

"4. Each import certificate shall contain the following information:

"(a) Domestic import certificate: identified by the country of issuance;

"(b) Country of issuance: identified by name or by a unique country code;

"(c) Date of issuance: in international date format;

"(d) Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing officer's name and signature;

"(e) Importer identification: the importer's name, address, telephone number, facsimile number and country of residence and, if the importer is a commercial or government body, the representative's name, citizenship and signature;

"(f) Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, telephone number, facsimile number and country of residence and, if the final recipient is a commercial or government body, the representative's name, citizenship and signature;

"(g) Importation authorized: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for import, listed by classification and description;

"(h) Certificate expiry date: the date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be imported pursuant to the import certificate or the date of expiry of the certificate, whichever is earlier;

"(i) Export country information: the name of the country of export;

"(j) Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) received to date pursuant to the import certificate;

"(k) Additional descriptive information concerning the firearms or parts and components: barrel length, overall length, the number of shots, the manufacturer's name and the country of manufacture.

"In-transit shipment authorizations

"5. Each in-transit shipment authorization shall contain the following information:

"(a) Country information: domestic in-transit authorization identifier; the country of issuance, identified by name or by a unique country code; the date of issuance; and competent authority identification, including the competent authority's name, address, telephone number and facsimile number;

"(b) Identification of the applicant: the applicant's name, address, country of residence, telephone number and facsimile number and the representative's name and signature if the applicant is a commercial or government body;

"(c) Authorization of the in-transit shipment: for each country, the in-transit shipment requirements of the competent authority including the authorized ports of entry and exit; expiry dates pertaining to authorization; any other specific information concerning the shipment while in that country, such as the periods during which the shipment is anticipated to be in bond and the anticipated location of the shipment while in bond; any restrictions or conditions imposed by the competent authority; and the authorizing officer's signature and seal."

Italy*

[Original: English]

Article 1: Relationship with the United Nations Convention against Transnational Organized Crime

1. Paragraph 2 should be deleted.

Article 2: Definitions

2. With reference to comments made by a number of delegations, the Italian delegation would like to present the following proposal related to the reformulation of the definition of "tracing" that appears in subparagraph (f) *bis* of article 2:

> "(f) *bis* 'Tracing': the systematic tracking of firearms [and ammunition] from manufacturer to purchaser for the purpose of assisting law enforcement authorities of States Parties [and relevant intergovernmental organizations] in analysing and monitoring illicit trafficking, as well as aiding competent national authorities in identifying suspects involved in criminal violations."

Article 3: Purpose

3. The text of article 3 should be replaced with the following:

> "Bearing in mind the illegal activities carried out by criminal organizations in the area of illicit manufacturing of and trafficking in firearms as well as their use for the purpose of facilitating the unlawful enterprises of those organizations, the purpose of this Protocol is to promote and facilitate cooperation, including the exchange of information, experience and expertise, among States Parties and relevant intergovernmental organizations, in order to prevent, combat, eradicate and prosecute the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition."

Japan**

[Original: English]

Article 2: Definitions

1. It is proposed to amend subparagraphs (d) and (f) of article 2 to read as follows:

> "(d) 'Illicit manufacturing': the manufacturing or assembly of firearms and ammunition:
>
> "(i) From components or parts illicitly trafficked;
>
> "(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or
>
> "(iii) Without marking the firearms at the time of manufacture;
>
> "(e) ...

* Amendments previously issued in document A/AC.254/5/Add.18.
** Amendments previously issued in document A/AC.254/5/Add.18.

"(f) 'Parts and components': any essential element or replacement element of a firearm, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, including any device designed or adapted to diminish the sound caused by firing the firearm."

Article 4: Scope

2. It is proposed to amend article 4 to read as follows:

"This Protocol applies to firearms, their parts and components and ammunition, but not to State-to-State transactions or transfers for the purpose of national security."

Article 6: Jurisdiction

3. It is proposed to amend article 6 to read as follows:

"Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in article 5 of this Protocol. Article 9 of the Convention shall apply *mutatis mutandis* to the offences established pursuant to this Protocol."

Article 7: Confiscation or forfeiture

4. It is proposed to amend article 7 to read as follows:

"States Parties shall adopt such measures as may be necessary to enable the confiscation or forfeit of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked. Article 7 of the Convention shall apply *mutatis mutandis* to this Protocol."

Article 8: Record-keeping

5. It is proposed to amend article 8 to read as follows:

"Each State Party shall ensure the maintenance for not less than ten years of information in relation to firearms necessary to trace and identify those which are illicitly manufactured and trafficked and to prevent and detect such activities. The information shall include:

"(a) The appropriate marking applied at the time of manufacture;

"(b) In cases involving international transactions, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries where appropriate and the final recipient, description and quantity of the articles."

Malawi and Swaziland

[Original: English]

Article 2: Definitions

Malawi and Swaziland propose the insertion in article 2 of a new subparagraph to read as follows:

"(...) 'Broker': brokering shall mean acting:

(i) For a commission, advantage or cause, whether pecuniary or otherwise;

(ii) To facilitate transfer, documentation, and/or payment in respect of any transaction relating to the buying or selling of firearms, their parts and components and ammunition; and

Thereby acting as intermediary between any manufacture or supplier of or dealer in firearms, their parts and components and ammunition and any buyer or recipient thereof."

Mexico

[Original: English]

A. Amendment previously issued in document A/AC.254/5/Add.18.

Article 3: Purpose

1. It is proposed to amend article 3 to read as follows:

"The purpose of this Protocol is:

"(a) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;

"(b) To promote and facilitate cooperation and the exchange of information and experience among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials."

B. Further amendment

Article 17: Confidentiality

2. Mexico proposes the following amended text of article 17:

"States parties shall guarantee the confidentiality of any information that it receives from another State Party, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information, unless the State Party concerned has previously informed the State Party providing the information about the possibility that it may be unable to fulfil this obligation pursuant to its domestic legislation. If such confidentiality cannot be maintained, the State Party that provided that information shall be notified prior to its disclosure."

Norway*

[Original: English]

Article 5: Criminalization

The following new subparagraphs should be added to paragraph 1:

* Amendment previously issued in document A/AC.254/L.142.

"(...) Intentionally providing false, misleading, incomplete or otherwise incorrect information in licensing or authorization documents;

"(...) Intentionally making, procuring or providing fraudulent licensing or authorization documents agreed upon in this Protocol; and

"(...) Knowing that licensing or authorization documents are fraudulent:

"(i) Using, dealing with or acting on such documents; and

"(ii) Causing such fraudulent documents to be used, dealt with or acted on."

Syrian Arab Republic*

[Original: Arabic]

Title

1. The Syrian Arab Republic supports the proposal by Japan (A/AC.254/L.22, paras. 5 and 6), in which it is stated that the title of the Protocol should read "Protocol to Combat the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials supplementary to the United Nations Convention against Transnational Organized Crime", so that the wording would be more in line with Economic and Social Council resolution 1998/18 of 28 July 1998, on measures to regulate firearms, and General Assembly resolution 53/111 of 9 December 1998, on transnational organized crime.

2. The same wording should be used in the text of the draft Protocol (in the places indicated by Japan in the annex to its proposal (A/AC.254/L.22, annex)), so that the wording of the draft Protocol is consistent with that of the above-mentioned resolutions.

Preamble

New preambular paragraph

3. A new preambular paragraph should be added before preambular paragraph (a), the text of which should read as follows:

"*Taking note* of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as 'the Convention'),"

Preambular paragraph (a)

4. Option 2 should be adopted.

Preambular paragraph (b)

5. Option 2 should be adopted.

Preambular paragraph (c)

6. Option 1 should be adopted.

* Amendments previously issued in document A/AC.254/L.133.

Preambular paragraph (c) bis

7. Preambular paragraph (c) *bis*, proposed by the delegation of Mexico, should be deleted.

Preambular paragraph (d)

8. Option 1 should be adopted.

Preambular paragraph (f) bis

9. Preambular paragraph (f) *bis* should be adopted as an alternative to preambular paragraphs (e) and (f).

Preambular paragraph (g)

10. Preambular paragraph (g) should be deleted because preambular paragraph (f) *bis* is sufficient.

Preambular paragraph (h)

11. Option 2 should be adopted.

Preambular paragraph (i)

12. Option 2 should be adopted.

New preambular paragraph

13. The following new preambular paragraph should be added:

> "*Desiring to* supplement the Convention by a protocol designed to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,"

Article 1: Relationship with the United Nations Convention against Transnational Organized Crime

14. The text of article 1 should be amended to read "The provisions of articles [...] of the Convention, done at [...], shall also apply mutatis mutandis to this Protocol", thereby bringing that article in line with the text of article 1, option 2, of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the "Migrants Protocol" (A/AC.254/4/Add.1/Rev.2)).

Paragraph 2

15. Paragraph 2 should be moved to article 3.

Article 2: Definitions

16. The proposal that the definitions in article 2 should be in a logical order rather than in alphabetical order (footnote 32) should be adopted.

Paragraph (a)

17. The words in brackets should be deleted.

Paragraph (b)

18. The brackets should be removed.

Paragraph (c)

19. Option 2 should be adopted.

20. The word "lethal" should be replaced with the word "portable".

21. The words "propelled by action of an explosive material" should be added after the word "missile".

22. The words "and replicas of such firearms" should be added after the words "antique firearms".

Paragraph (d)

23. The word "explosives" in brackets should be deleted.

24. In subparagraph (d) (ii), option 1 should be adopted.

Paragraph (e)

25. The word "explosives" in brackets should be deleted from subparagraph (e) (i).

Paragraph (f)

26. The brackets in subparagraphs (e) (ii) and (l) (iii) should be removed.

27. Option 2 should be adopted and the text of paragraph (f) should be amended to read as follows:

> "(f) 'Parts and component'. any components of a firearm that are essential to its operation, such as a barrel (cylinder), frame or slide."

Paragraph (f) ter

28. Paragraph (f) ter should be deleted.

Article 3: Purpose

Subparagraph (a)

29. Subparagraph (a) should be deleted.

Subparagraph (b)

30. Option 2 should be adopted and the following words should be added to the end of the text: "in the context of transnational organized crime".

Article 4: Scope

31. The title of article 4 should be amended to read "Scope of application".

32. Option 4 should be adopted.

Article 4 bis: Sovereignty

Paragraph 1

33. Paragraph 1 should be moved to the end of the draft Protocol.

Paragraph 2

34. Paragraph 2 should be moved to article 6 (Jurisdiction).

Article 5: Criminalization

Paragraph 1

35. The word "and" in brackets should be deleted and the word "criminal" in brackets should be deleted.

36. The remaining brackets should be removed.

37. In line with article 4, paragraph 1, option 1, of the Migrants Protocol (A/AC.254/4/Add.1/Rev.2), the phrase "in connection with a criminal organization" should be amended to read "in the context of transnational organized crime, as defined in the Convention".

38. Subparagraph (c) should be deleted since it deals with matters other than illicit manufacturing and trafficking—matters that extend beyond the scope of the draft Protocol.

39. The order of subparagraphs (a) and (b) should be reversed.

Paragraph 2

40. The brackets should be removed.

Paragraph 3

41. Paragraph 3 should be deleted since its cope extends beyond individuals to include States, in addition to the fact that it deals with matters other than illicit manufacturing or trafficking.

Article 6: Jurisdiction

42. Option 1 should be adopted, thereby bringing article 6 in line with the provision contained in article 6 of the Migrants Protocol (A/AC.254/4/Add.1/Rev.2).

Article 7: Confiscation or forfeiture

43. The words "or forfeiture" in the title should be deleted.

Paragraph 1

44. The words in brackets should be deleted.

Paragraph 2

45. Paragraph 2 should be redrafted to read as follows: "States Parties shall dispose of the confiscated firearms and ammunition in accordance with their respective national laws".

Article 8: Record-keeping

Paragraph 1

46. The brackets should be removed.

Paragraph 2

47. The first sentence in brackets, which reads "Records shall be kept for a period of not less than [ten] years after the last transaction effected under a [particular certificate]", should be deleted.

48. The brackets should be removed from the second sentence.

Paragraph 3

49. Option 2 should be adopted.

Article 9: Marking of firearms

Paragraph 1

50. The brackets should be removed.

51. In subparagraph (a), the words "and year" should be added after the word "place" and the brackets should be removed. In subparagraph (b), the brackets should be removed. In subparagraph (c), the brackets should also be removed.

Paragraph 1 bis

52. The brackets should be removed.

Article 11: General requirements for export, import and transit licensing or authorization systems

Paragraph 2

53. Option 2 should be adopted.

Paragraph 3

54. Option 1 should be adopted.

Paragraph 5

55. Paragraph 5 should be deleted.

Article 12: Security measures

56. The brackets should be removed.

Article 15: Cooperation

Paragraph 2

57. The bracketed words "on matters relating to this Protocol" should be retained.

Paragraph 3

58. The brackets should be removed.

Article 15 bis: Establishment of a focal point

59. Article 15 *bis* should be deleted in order to avoid duplication, the focal points having been mentioned in article 15.

Article 16: Exchange of experiences and training

Paragraph 2

60. The phrase in brackets should be deleted.

Article 17: Confidentiality

61. Option 1 should be adopted and the brackets should be removed from the words ", other law". The second phrase in brackets should be deleted.

Article 18 bis: Registration and licensing of brokers

62. The title of this article should be changed to "Licensing by brokerage".

63. The words "natural or judicial" should be added before the word "person".

64. The brackets should be removed from the words "and ammunition".

65. The words "wherever located" should be deleted.

66. The words "to register with and receive approval from his or her country of nationality" should be replaced with the words "to obtain a licence to engage in that activity from his or her country of residence".

United Kingdom of Great Britain and Northern Ireland and United States of America*

[Original: English]

Article 2

It is proposed to amend subparagraph (f) of article 2 to read as follows:

"(f) 'Parts and components': any essential element or replacement element of a firearm, including a barrel, frame or receiver, slide or cylinder, bolt or breech block and also including any device designed or adapted to diminish the sound caused by firing the firearm."

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* Amendments previously issued in document A/AC.254/5/Add.18.

United Nations A/AC.254/5/Add.23

General Assembly

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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

Ninth session
Vienna, 5-16 June 2000
Item 4 of the provisional agenda*
Consideration of the revised draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 2, 2 *bis* (subparagraph (a) only), 4 *bis*, 9, 10, 10 *bis*, 14, 14 *bis*, 15 and 16

Proposals and contributions[2]

Addendum

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* A/AC.254/29.

[2] The present document includes, in addition to proposals to be considered by the Ad Hoc Committee at its ninth session, proposals to be considered at the informal consultations to be held during the ninth session.

II. Proposals and contributions

Canada

[Original: English]

Article 10: Extradition

Paragraph 2

1. Where the involvement of an organized criminal group is being considered solely for the purpose of determining if the Convention applies under this article, it need not be established as if it were an element of the offence. In that regard, when determining the issue, the requested State Party shall take into consideration the information contained in the warrant of the arrest or order having the same effect or in the conviction of the person whose extradition is required or in any additional statement of the facts provided by the requesting State Party.

2. The determination of the applicability of the Convention on the basis of the involvement of an organized criminal group may be reserved for the executive.

Italy*

[Original: English]

Article 14: Mutual legal assistance

1. Current paragraph 17 might be reformulated as follows:

> "17. A request shall be executed in accordance with the domestic law of the requested State and, to the extent not contrary to the fundamental principles of its domestic law, in accordance with the formalities and procedures specified in the request. The requested State shall execute the request for assistance as soon as possible and shall take as full account as possible of any deadlines set by the requesting State."

2. In paragraph 26, after the words "pursuant to paragraph 25", the following words should be added "or when a request cannot be executed in accordance with the formalities and procedures expressly indicated by the requesting State pursuant to paragraph 17 of this article."

Hearing by video conference

3. A separate article dealing with video conferencing should be considered, to read as follows:

"Article (...)
"Hearing by video conference

> "1. When a person who is present in the territory of a State Party has to be heard as a witness or an expert by the judicial authorities of another State Party and it is not possible or desirable for that person to appear before those authorities, the

* Amendments previously issued in document A/AC.254/L.154.

first State Party may, upon request of the other State, consent to the hearing to take place in its territory by video conference.

"2. In the implementation of paragraph 1 of this article, the following provisions shall apply, except where agreed otherwise on a case-by-case basis:

"(a) The hearing shall be conducted by a judicial authority of the requesting State in accordance with the domestic law of that State and shall be attended by a judicial authority of the requested State; the latter shall be responsible for the identification of the person to be heard and shall, on conclusion of the hearing, draw up minutes indicating the date and place of the hearing and any oaths taken; the hearing shall be conducted without any physical or mental pressure on the person questioned;

"(b) If the judicial authority of the requested State considers that during the hearing the fundamental principles of the law of that State are infringed, he or she has the authority to interrupt or, if possible, to take the necessary measures to continue the hearing in accordance with those principles;

"(c) The person to be heard and the judicial authority of the requested State shall be assisted by an interpreter as necessary;

"(d) The person to be heard may claim the right not to testify as provided for by the domestic law of the requested State or of the requesting State; the domestic law of the requested State applies to perjury.

"3. All costs of the video conference shall be borne by the requesting State, which may also provide as necessary for technical equipment.

"4. To the extent permitted by their domestic law, States Parties may agree to apply, *mutatis mutandis*, the provisions of this article to hearing of accused persons."

Article 14 bis: Joint investigations

4. Current article 14 *bis* on joint investigations might be slightly reworded to read:

"States Parties shall consider concluding bilateral or multilateral agreements or understandings whereby, in relation to matters that are the subject of criminal proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies on a reciprocal basis. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory the investigation is to take place is fully respected."

5. Article 19, paragraph 2 (c), should consequently be deleted.

Peru*

[Original: Spanish]

Article 4 bis: Measures to combat money-laundering

Paragraph 1

It is proposed to add the following text at the end of subparagraph (a): ", which shall be understood to mean unusual transactions that, by reason of their amount, characteristics and frequency, are inconsistent with the customer's business activity, exceed the normally accepted parameters of the market or have no clear legal basis and could constitute or be connected with unlawful activities in general".

Spain**

[Original: English/French/Spanish]

Article 2 bis: Use of terms

1. The definition of "organized criminal group" in subparagraph (a) is of great importance for the draft United Nations Convention against Transnational Organized Crime and, therefore, it must be as clear and precise as possible.

2. According to subparagraph (a) of article 2 *bis*, the "organized criminal group" to which this Convention refers must, as the first requirement, be a "structured group". In subparagraph (c), "structured group" is defined as a group not formed fortuitously for the immediate commission of a crime. That means that in the definition of "organized criminal group" there have been two different successive events:

(a) The first, when the structured group was formed; and

(b) The second, when the crime was committed. Pursuant to subparagraph (a), the purpose of the crime must be that of obtaining financial or other benefit of a material nature.

As a result of the foregoing, the "organized criminal group", whatever the purpose for which it may have been formed, must necessarily have been formed prior to and independently of the type of crime that will be committed.

3. With a view to giving greater precision and clarity to this definition, the delegation of Spain proposes to include in subparagraph (a) the words ", whatever the purpose for which it may have been formed," after the words "a structured group". The amended subparagraph would thus read:

> "For the purposes of this Convention:
>
> "(a) 'Organized criminal group' shall mean a structured group, whatever the purpose for which it may have been formed, of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established pursuant to this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;"

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* Amendment previously issued in document A/AC.254/L.177.

** Amendments previously issued in document A/AC.254/L.170.

Syrian Arab Republic

[Original: Arabic]

Article 19: Law enforcement cooperation

Paragraph 2

1. The words "the offences covered by this Convention" should be retained.

2. The brackets in subparagraph (a) should be removed.

3. Not applicable to English.

4. In subparagraph (d), the words "quantities of substances" should be replaced by the words "quantities of seized substances" in line with the purport of paragraph 1 (d) of article 9 of the 1988 Convention.

Paragraph 3

5. In subparagraph (b), the words "in order to maintain the confidentiality of information exchanged" should be inserted after the words "in accordance with their national law".

Paragraph 4

6. In subparagraph (a), the words ", within its means," should be inserted after the word "Designate".

Article 22: Prevention at the national level

Paragraph 5

7. This paragraph should be deleted.

Article 26: Signature, ratification, acceptance, approval, accession and reservations

Title

8. The words "and reservations" should be deleted.

Paragraph 1

9. The phrase "at the United Nations Office at Vienna" should be inserted after the words "all States for signature".

10. The time limit for signature in Vienna should be three months after the date of adoption of the Convention and the time limit for signature in New York should be one year after the date of adoption of the Convention.

Paragraphs 3, 4 and 5

11. These paragraphs should be included in a separate article entitled "Reservations", with the following amendments:

(a) Paragraph 4 should be deleted;

(b) The brackets in paragraphs 3 and 5 should be deleted.

Article 27: Entry into force

Paragraph 1

12. The words "the thirtieth" should be replaced with the words "the ninetieth", in line with article 29, paragraph 1, of the 1988 Convention.

13. In order to emphasize the international nature of the Convention, its entry into force should be determined as of the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession.

United States of America*

[Original: English]

Article 9: Jurisdiction

Paragraph 1

It is proposed to amend paragraph 1 to read as follows:

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in articles 3, 4, 4 *ter* and 17 *bis* of this Convention when:

"(a) The offence is committed within the territory of that State; or

"(b) The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed, where, under the domestic laws of that State, such vessel or aircraft would be considered also to be within its territorial jurisdiction."

Recommendation of the informal working group on article 9, paragraph 2 (c)**

Article 9: Jurisdiction

Paragraph 2

It is proposed to amend subparagraph (c) to read as follows:

"(c) The offence is:

"(i) One of those established in article 3, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

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* Amendment previously issued in document A/AC.254/L.192.

** Amendment previously issued in document A/AC.254/L.184.

"[(ii) One of those established in article 4, paragraph 1 (d), of this Convention and is committed outside its territory with a view to the commission of an offence established in article 4, paragraph 1 (a), (b) or (c), of this Convention within its territory.]"

United Nations A/AC.254/5/Add.24

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Proposals and contributions

Addendum

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V.00-53020 (E)

II. Proposals and contributions

Argentina*

[Original: Spanish]

Argentina proposes that the following section be inserted after article 7 and the subsequent sections renumbered accordingly:

"(...) Trafficking in migrants by land

"Article (...)

"1. States Parties shall make provision in their respective legislations to establish the liability of commercial overland carriers for the transport of passengers and crew members, in conformity with the immigration law of the country of destination or transit. To that end, the legislation of States Parties shall provide that commercial overland carriers shall, as an absolute prerequisite for undertaking the carriage, demand all due documentation required for admission of their passengers to the territory of the State of destination or transit in any of the categories of admission stipulated in domestic immigration law.

"2. States Parties shall establish in their domestic legislation the obligation for commercial overland carriers, in cases of transit through one or more States, to declare the names of passengers whom they are transporting to the immigration authority competent for the latter. States Parties shall also adopt measures in their domestic legislation to render the commercial overland carrier responsible for the actual exit of such persons from the corresponding territories and shall provide that, in the event that passengers declared as being transported fail to leave the country in the manner, at the place and within the time limit stipulated in the immigration law of the transit country, the immigration authority of that country may arrange for the return of such persons at the exclusive cost of the carrier.

"3. It shall be possible for the provisions of this article not to apply within the territorial scope of economic unions, customs unions or free-trade zones that have specific regulations governing the entry into and movement of persons within such integrated geographical areas that do not conform to the provisions of this article.

"4. Any State Party that has sufficient grounds to believe that a commercial overland carrier is involved in activities related to trafficking in migrants may request the necessary assistance to counter such activities from the State Party in which that carrier is lawfully constituted, or in which the vehicles used by such carrier in the provision of its services are situated or registered, or in which such carrier has its actual place of business, in conformity with the legal provisions of the country concerned.

"5. States Parties shall establish ongoing cooperation mechanisms for the detection of any carriage of persons, from one country to another or in transit to a third country, undertaken by persons on an individual or organized, regular or occasional basis without due authorization, by a means of overland transport.

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* Amendment previously issued in document A/AC.254/5/Add.21.

"6. States Parties shall establish institutional cooperation mechanisms for the detection and punishment of freight carriers who engage in the smuggling of migrants.

"7. States Parties shall offer the fullest assistance with regard to the investigation of methods of overland trafficking coming within their jurisdiction. Authorities involved shall act with all due diligence in order to ensure that such assistance is furnished expeditiously with a view to avoiding any impairment of such cooperation."

Belgium*

[Original: French]

Article 7 ter: Safeguard clauses

Footnote 34 to article 7 *ter* in document A/AC.254/L.128/Add.2 should be expanded. Belgium suggests that article 7 *ter* be supplemented by article 110, paragraph 3, of the United Nations Convention on the Law of the Sea of 1982, the text of which would be reproduced there *in extenso*:

"If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained."

Cameroon**

[Original: French]

Article 8: Compliance measures and arrangements

Paragraph 2 (a)

1. Delete the word "illegal" before the word "smuggling", this qualification being redundant.

Article 11: Prevention

Paragraph 1

2. Delete the words "and seizing", since the operation of inspection is deemed sufficiently rigorous for the prevention stage.

Article 14: Training

Paragraph 3

3. Paragraph 3 should become article 14 *bis* and read as follows:

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* Amendment previously issued in document A/AC.254/5/Add.21.

** Amendments previously issued in document A/AC.254/5/Add.21.

"Article 14 bis
"Technical cooperation

"Each State Party shall make every effort to provide the necessary resources, including vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise shall provide technical assistance to States lacking such expertise."

Article 15: Return of smuggled migrants

Paragraph 1

4. It would be advisable to reword this paragraph in the light of international human rights standards, the economic potential of each State and the length of stay of each migrant.

China*

[Original: English]

New article

After article 11, add a new article as follows:

"Article (...)
"Measures to eliminate the root causes

"States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes of the smuggling of migrants, such as poverty and underdevelopment."

Colombia

[Original: Spanish]

Preamble

1. It is proposed to amend paragraph (i) to read as follows:

"(i) *Also convinced* that, to counter this phenomenon, a global and regional approach, including socio-economic measures, is necessary in order to improve the situation of vulnerable population groups in the countries of origin,"

2. It is proposed to add a new preambular paragraph after paragraph (k) as follows:

"(...) *Taking note* of the conventions and other relevant instruments of the United Nations on the protection of migrants,"

Article 11: Prevention**

3. It is proposed to add a new paragraph after paragraph 2 as follows:

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* Amendment previously issued in document A/AC.254/5/Add.21.

** Amendment previously issued in document A/AC.254/L.183.

"(...) With a view to discouraging and preventing the smuggling of migrants, States Parties shall seek, where appropriate, to conclude bilateral or multilateral agreements aimed at ensuring orderly migration."

France*

[Original: French]

Article 9: Additional legislative and administrative measures

It is proposed that article 9 should read as follows:

"Article 9
"Other measures

"1. States Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall include the establishment, without prejudice to the international conventions applicable, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

Germany**

[Original: English]

Article 7 ter: Safeguard clauses

Paragraph 4

1. Add the words "When taking such action against a ship," at the beginning of subparagraph (a), and reverse the order of subparagraphs (a) and (b). The reason for this addition and the reversal of the subparagraphs is that, as the text now stands, States simply cannot comply with what is required. They cannot "ensure the safety and humane handling of the persons on board" as such and in general, except if and when they take action against the ship.

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* Amendment previously issued in document A/AC.254/5/Add.21.

** Amendments previously issued in document A/AC.254/5/Add.21.

Article 10: Information

Paragraph 3

2. After the words "States Parties" add the words ", in particular those with common borders or located along smuggling routes,".

Holy See*

[Original: English]

Article 11: Prevention

The following paragraphs should be added at the end of the article:

"(...) States Parties shall foster development programmes and cooperation at the national, regional and international levels, paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the trafficking in migrants.

"(...) States Parties shall encourage cooperation on immigration and asylum policies and shall adopt such global migration strategies as may be necessary to prevent trafficking in migrants."

India*

[Original: English]

Article 4: Criminalization

Paragraph 2

Replace paragraph 2 with the following:

"2. Each State Party shall also adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"(a) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in paragraphs 1 and 2 of this article;

"(b) Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"(c) Participating as an accomplice in an offence set forth in this article; or

"(d) In any other way contributing to the commission of an offence set forth in this article."

* Amendment previously issued in document A/AC.254/5/Add.21.

Libyan Arab Jamahiriya*

[Original: Arabic]

Article 7: Measures against the smuggling of migrants by sea

Paragraph 6

1. In the second sentence, provision is made for the exception of necessary actions "to relieve imminent danger". The phrase used lacks clarity and should be replaced with the words "except those which might be taken in implementation of existing binding agreements".

Paragraph 7

2. The words "or, where necessary, authorities," are not useful and should be deleted.

Paragraph 8

3. In the first sentence, replace the word "concluded" with the word "classified", because "concluded" is ambiguous and not defined.

Paragraph 9

4. The right of inspection by a State Party should be restricted by an obligation to notify the State Party of which the vessel claims registry, if it is found that the vessel in effect belongs to a State Party, before continuing the inspection or taking any necessary measures.

Article 8: Compliance measures and arrangements

Paragraph 2

5. The Libyan Arab Jamahiriya suggests the deletion of subparagraph (b), because enhancing the provisions of the Protocol will be a sine qua non once the Protocol comes into force, so there will be no need for such a provision.

Article 9: Additional legislative and administrative measures

6. In the first sentence, the word "administrative" should be used instead of the word "legislative", in line with the wording of paragraph 1 of article 8.

7. In the second sentence, the reason for using the word "forfeiture" should be clarified, because it is ambiguous here.

Article 10: Information

Paragraphs 1 and 2

8. Paragraphs 1 and 2 should be merged, because their meaning is identical. The revised paragraph should read as follows:

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* Amendments previously issued in document A/AC.254/5/Add.21, based on the text of the revised draft Protocol contained in document A/AC.254/Add.1/Rev.2.

"Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information with a view to preventing potential migrants from becoming victims of criminal organizations by increasing public awareness of the fact that smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to those involved."

9. In subparagraph (e), the word "also" should be added after the words "practices and".

Article 14: Training

Paragraph 2

10. Subparagraph (a) should be deleted because it duplicates article 12.

Paragraph 3

11. The words "potential tools" should be used instead of the word "resources", because the articles listed in the text are not resources but potential tools.

Article 15: Return of smuggled migrants

Paragraph 1

12. Add at the end of the paragraph the words "whenever such return poses no risk to his or her life and protects him or her from any illegal harm that might be incurred upon return".

Article 16: Implementation

13. Paragraphs 1 and 2 should be merged to read:

"For the purpose of examining the progress made by the States Parties in achieving the implementation of the obligations undertaken in the present Protocol, the States Parties will provide periodic reports to the Conference of the Parties to the Convention. States shall provide such reports together with the reports submitted in accordance with article 23 of the Convention and on the same dates."

Lithuania*

[Original: English]

Article 9: Additional legislative and administrative measures

1. Lithuania would like to point out that, on the basis of the *non bis in idem* principle, the sanctions provided for in article 9 may be applied to commercial carriers only in cases where no actions are brought against them for smuggling migrants. Lithuania ventures to express the view that the current wording of the article may leave it open to interpretation as stipulating that, on the basis of the same *non bis in idem* principle, commercial carriers guilty of smuggling migrants should bear administrative responsibility only and not be charged for smuggling migrants.

* Amendments previously issued in document A/AC.254/5/Add.21.

Article 10: Information

Paragraph 2

2. Paragraph 2 of article 10 of the draft Protocol would obligate States Parties to undertake preventive measures ensuring that potential migrants do not become victims of crimes committed by organized criminal groups. Lithuania would like to draw attention to the fact that the draft Convention could set obligations to take preventive measures ensuring the rights not only of potential migrants, but also those of migrants in the process of being transported and migrants who have already been transported.

3. In the opinion of Lithuania, the use of the term "victim" raises some doubts. The term "victim" suggests illegal violence used against a person. Lithuania therefore considers that in a case where a migrant may be considered the victim of a crime, the crime itself shall be recognized as trafficking in persons and not as smuggling migrants.

Mexico*

[Original: Spanish]

1. It is proposed to add the following paragraphs after article 3 *bis*:

"2. The relatives of the migrant shall not become punishable for acts, committed by an organized criminal group of which the relative is not a member, whose purpose is the illegal trafficking in and transporting of that migrant.

"3. The relatives of the migrant shall not become punishable by reason of the profits obtained by an organized criminal group from those relatives as a result of the illegal trafficking in and transporting of that migrant."

2. It is proposed to add the following article after article 7 *quater*:

"Article (...)
"Implementation measures

"1. States Parties shall ensure that their law enforcement personnel and officers act with full respect for the person and dignity of those involved in the illegal trafficking in and transporting of migrants and shall dispense to them humanitarian treatment at all times, in particular to victims at the time of seizure or detention by reason of illegal trafficking and transport.

"2. States Parties shall grant migrants and their relatives access to the domestic courts and competent authorities for the purpose of instituting liability proceedings against a member or members of an organized criminal group for illegal trafficking and transport of which they are subject. Their domestic law shall provide for procedures in order that migrants and their relatives can obtain compensation for loss or damage sustained by them by reason of illegal trafficking and transport.

"3. States Parties shall make available to migrants and their relatives relevant information concerning judicial and administrative procedures for instituting liability proceedings against a member or members of an organized criminal group and for obtaining compensation.

* Amendments previously issued in document A/AC.254/L.160.

"4. States Parties shall afford due assistance to migrants whose health, person, life, safety or liberty is endangered by reason of illegal trafficking and transport.

"5. At the time of any seizure or detention, those involved in illegal trafficking and transport shall be informed of their right to the protection and assistance of the consular or diplomatic authorities of the State of which they are nationals."

Morocco*

[Original: French]

Morocco proposes the following text as either paragraph 6 of article 4 (Criminalization) or a new article 4 *bis*:

"(...) States Parties that have not yet done so shall adopt the necessary legislation or other measures to guarantee respect for and protection of the rights of migrants in irregular situations, as accorded under applicable international law, in particular the right to life, the principles of non-discrimination and *non-refoulement* and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

Netherlands*

[Original: English]

Article 11: Prevention

The Netherlands proposes to add a new paragraph at the end of the article:

"(...) With a view to promoting and accelerating cooperation between the relevant authorities, States Parties may conclude bilateral or regional agreements providing for the secondment of liaison officers from one State Party to relevant authorities of the other State Party. The liaison officer shall have the task of giving advice and assistance and of facilitating the secure and rapid exchange of information. He shall have no operational powers and shall respect the integrity of the host country."

Philippines*

[Original: English]

Article 12: Control of documents

1. The Philippines proposes to add a new paragraph at the end of the article:

"(...) States Parties shall adopt such measures as may be necessary to ensure the security of all materials used in the production of travel documents and shall, from

* Amendment previously issued in document A/AC.254/5/Add.21.

time to time, initiate innovations in these materials to upgrade the security of travel documents."

2. This is necessary to prevent organized criminal syndicates from manufacturing fake travel documents using materials similar to those used in the manufacture of genuine travel documents.

Singapore*

[Original: English]

Article 7 bis: Measures against the smuggling of migrants by sea

Paragraph 1

1. Singapore proposes to insert the words "in international waters" after the words "exercising freedom of navigation" in order to clarify the provision so as to ensure that the exclusive right of coastal States to exercise enforcement jurisdiction in territorial waters remains unaffected.

Paragraph 6

2. The words ", while in international waters," should also be inserted after the words "to suspect that a vessel" in paragraph 6, for the same reason as above, that is, to remove any ambiguity over the exclusive right of coastal States to exercise enforcement jurisdiction within territorial waters.

Article 7 ter: Safeguard clauses

3. Singapore proposes the insertion of a new paragraph after paragraph 5 of article 7 *ter* of the draft Protocol:

> "No action taken pursuant to articles 7 to 7 *quater* of this Protocol shall be taken in the territorial sea, except with the permission of the coastal State."

4. The current language of article 7 *bis* is somewhat ambiguous and potentially leaves open the possibility that the authorities of a third State Party may be authorized, by the terms of those provisions, to take enforcement action against a vessel suspected of being engaged in the smuggling of migrants within the territorial waters of another State Party.

5. The basic underlying principle is that it is the exclusive right of coastal States to exercise enforcement action within their own territorial waters. It is a shared concern of all delegations that the Protocol does not interfere in any way with the existing rights of coastal States.

6. Singapore therefore proposes to expressly restate the undisputed principle of international law, as set out in paragraph 3 above, to ensure that there is no ambiguity or doubt as to the implementation and application of the provisions, obligations and rights set out in articles 7 to 7 *quater* of the draft Protocol.

* Amendments previously issued in documents A/AC.254/L.153 and A/AC.254/5/Add.21.

Syrian Arab Republic*

[Original: Arabic]

Preamble

1. Remove the square brackets in subparagraphs (a), (c), (d), (f)-(h), (o) and (q).

2. After subparagraph (q), add a new subparagraph similar to the final subparagraph of the preamble of the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking in Persons Protocol"), to read as follows:

> "(...) *Taking into account* the provisions of the United Nations Convention against Transnational Organized Crime,"

Article 6: Jurisdiction

Paragraph 1

3. Add the words "in accordance with their basic legal principles" after the words "shall take".

Article 7: Measures against the smuggling of migrants by sea

Paragraph 5

4. Delete the phrase "and to a request for authorization made pursuant to paragraph 3 of this article" because the phrase would obligate the State Party to respond to the requested authorization, while paragraph 3 of this article allows the flag State to authorize the requesting State to board and inspect the vessel and to take appropriate action.

Paragraph 14

5. The meaning of the words "operational arrangements in relation to specific cases" needs to be clarified.

Article 8: Compliance measures and arrangements

Paragraph 1

6. Add the words "in accordance with their basic legal principles" after the word "adopt".

Paragraph 2

7. Delete the word "illegal" in subparagraph (a), because trafficking is per se an illegal act.

Article 9: Additional legislative and administrative measures

8. Add the words "in accordance with their basic legal principles" after the words "shall take".

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* Amendment previously issued in document A/AC.254/5/Add.21.

9. The word "forfeiture" needs to be clarified.

Article 11: Prevention

10. The Syrian Arab Republic endorses the two paragraphs proposed by the Holy See for addition to this article (see above under Holy See).

Article 11 bis

11. The Syrian Arab Republic endorses new article 11 *bis*, proposed by China (see above under China).

Additional articles

12. Articles relating to the following issues should be added:

(a) Assistance for and protection of victims of trafficking in persons, in line with article 4 of the Trafficking in Persons Protocol;

(b) Status of the victim in the receiving State, in line with article 5 of the Trafficking in Persons Protocol;

(c) Seizure and confiscation of gains, in line with article 5 *bis* of the Trafficking in Persons Protocol.

United States of America*

[Original: English]

Article 9: Additional legislative and administrative measures

The United States of America proposes the following amended text for article 9:

"Article 9
"Other measures

"1. States Parties shall take legislative or other measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

* Amendment previously issued in document A/AC.254/5/Add.21.

European Community

[Original: English, French and Spanish]

Article 9: Additional legislative and administrative measures

1. It is proposed that article 9 be revised to read as follows:

"Article 9
"Other measures

"1. States Parties shall [may] take appropriate [legislative or other] measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 4 of this Protocol.

"2. Such measures shall [may] include [, where appropriate,] the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers travelling by land, sea or air in order to ascertain that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

"3. States Parties shall [may] take the necessary measures, in conformity with their domestic law, to provide for penalties in cases of violation of the obligation set out in paragraph 2 of this article. Such sanctions may include fines and forfeiture of the vehicles or means of transport used."

Article 11: Prevention

2. It is proposed that article 11 be revised to read as follows:

"Article 11
"Prevention

"1. ...

"2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying, in conformity with their respective national legislation, cooperation among border control agencies of the States concerned, even if those States are not Parties to this Protocol, in particular by establishing and maintaining direct channels of communication.

"3. With a view to promoting and accelerating cooperation between the relevant authorities, States Parties may conclude bilateral or regional agreements providing for the secondment of liaison officers from one State Party to relevant authorities of another State Party. The liaison officer shall have the task of giving advice and assistance and of facilitating the secure and rapid exchange of information. He shall have no operational powers and shall respect the integrity of the host country."